TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 204.

THE PLAQUEMINES TROPICAL FRUIT COMPANY, APPELLANT,

vs.

WILLIAM HENDERSON AND HENRY J. LEONY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 26, 1899.

(16,342.)

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(16,343.)

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

PLAQUEMINES TROPICAL FRUIT COMPANY, Appellant, *versus* WILLIAM HENDERSON and HENRY J. LEOVY, Appellees. } No. 12375. In Equity.

Messrs. Gurley & Mellen and Duane E. Fox, for the Plaquemines Tropical Fruit Company, appellant.

Messrs. J. P. Blair and Victor Leovy, for William Henderson and Henry J. Leovy, appellees.

Appeal from the circuit court of the United States for the eastern district of Louisiana, New Orleans division, to the Supreme Court of the United States of America, returnable within thirty (30) days from the 26th day of June, A. D. 1896, at the city of Washington, D. C.

Transcript of Appeal.

1 United States Circuit Court, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY *versus* WILLIAM HENDERSON and HENRY J. LEOVY. } No. 12375. In Equity.

Bill of Complaint.

Filed February 11, 1895.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The Plaquemines Tropical Fruit Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State, exhibits this its bill of complaint against William Henderson and Henry J. Leovy, who each reside in the city of New Orleans and are citizens of the State of Louisiana.

And thereupon your orator complains and says:

1. That your orator is the owner and in possession of that certain parcel of land in the parish of Plaquemines, State of Louisiana, consisting of all the land situated in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, lying west of the Mississippi river and Grand pass, except certain lots of small depth fronting on said Mississippi river, all lying above lot seven (7), in range thirty-one (31); also excepting section sixteen (16),

2 in range thirty (30); that your orator acquired said land by purchase from Chas. Louque by act of sale passed in the city

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of New Orleans, State of Louisiana, upon the 27th day of November, A. D. 1891, before Chas. T. Soniat, notary public; that said Chas. Louque acquired said land by purchase from Robert M. White by act of sale passed in the city of New Orleans, State of Louisiana, upon the 27th day of November, A. D. 1891, before Chas. T. Soniat, notary public; that said Robert M. White acquired said land by purchase from E. E. Norton, assignee in bankruptcy of the estate of C. C. Packard, by act of sale passed in the city of New Orleans, State of Louisiana, upon the 4th day of April, 1879, before Marcel T. Ducros, notary public, said sale having been made in pursuance of an order emanating from the United States circuit court in and for the district of Louisiana, bearing date the 12th day of March, A. D. 1879; that said C. C. Packard acquired said land by purchase from the State of Louisiana by patent 526 of said State of Louisiana, bearing date of 30th day of September, 1869; that said State of Louisiana acquired said land from the Government of the United States under the provisions of the act of Congress of the date of March 2nd, 1849, and the selection of said land was approved by the Secretary of the Interior May 6th, 1852; all of which will more fully appear, with other particulars, from the certified copies of said acts of sale and patent and approved list, hereto annexed and marked Exhibits A, B, C, D, and E for identification and made part of this bill.

2. Your orator further avers that the said William Henderson and Henry J. Leovy wrongfully deny your orator's title to portions of said land and wrongfully allege title in themselves adverse to your orator to portions of said land, and both said Henderson and
3 said Leovy have, by and through their agents, representatives, servants, and employees, trespassed upon your orator's said land and damaged and injured said land and your orator by cutting timber and willows thereon and removing and selling the same, and by plowing, cutting ditches, and otherwise destroying portions of said land; and the said Henderson and said Leovy are still so trespassing upon your orator's said land and cutting willows therefrom and otherwise injuring said land and damaging your orator, and they and each of them threaten to further trespass upon said land and to commit acts which will injure said land and your orator; and they further threaten to injure your orator's rights by dividing said land into small parcels or lots and renting or selling the same to a great number of persons, whom said Henderson and Leovy threaten to place upon said land; and your orator further avers that said defendants have threatened and do threaten to close Red pass and Tiger pass of the Mississippi river, which passes run through said land and afford the only means of access to large portions of your orator's said land, which actions will result in irremediable injury to the land and to your orator and cannot be compensated in damages; and the said actions and pretences of defendants have prevented and do prevent your orator from the enjoyment of its property, and prevents your orator from improving and selling said land, which is one of the principal objects for which your orator came into existence.

3. And your orator avers that neither the said Henderson nor the said Leovy have any legal right, title, or claim to any portion of said land, and their said acts and threatened acts are wholly unauthorized and illegal; that the said Henderson and the said Leovy claim to have purchased from the State of Louisiana,
4 through the register of the land office of said State, long subsequent to the said sale by the State of said land to your orator's said vendor, the following portions of said land on the dates stated and under patents numbered as follows, viz:

In Township Twenty-one (21) *South, Range Thirty* (30) *East.*

Pat. No.	Date.	Patentee.	Description.	Area stated in patent.
1944	May 11, 1894	H. J. Leovy	East ½ sec. 26	320 acres.
1945	" " "	" "	West ½ sec. 35	320 "
1946	" " "	" "	North ½ sec. 25	320 "
1947	" " "	" "	E. ¼ & S. W. ¼ sec. 24	480 "
1948	" " "	" "	N. E. ¼ sec. 29 & S. E. ¼ sec. 20	320 "
1949	" " "	" "	N. ½ & S. W. ¼ sec. 21	480 "
1950	" " "	" "	S. ½ sec. 15	320 "
1951	" " "	" "	S. ½ sec. 14	320 "
1952	" " "	" "	N. E. ¼ & S. ½ sec. 13	480 "

In Township Twenty-one (21) *South, Range Thirty-one* (31) *East.*

2641	Apr. 8, 1893	Wm. Henderson	Sec. 18	640 "
2642	" " "	" "	Sec. 19	640 "
2643	" " "	" "	Sec. 20	640 "
2644	" " "	H. J. Leovy	Sec. 32	640 "
2651	May 3, 1893	Wm. Henderson	Sec. 29	640 "
2652	" " "	" "	Sec. 33	640 "
1906	May 11, 1894	" "	Fractional secs. 7 & 17	580 "
1907	" " "	" "	Sec. 28	640 "
1908	" " "	" "	Fractional sec. 21	320 "
1953	" " "	H. J. Leovy	W. ½ sec. 30	320 "
2017	May 22, 1894	" "	E. ½ sec. 30	320 "
2018	" " "	" "	E. ½ sec. 31	320 "

And your orator avers that said defendants assert and claim
5 that your orator has no title to said portions of said land because of a decision of the civil district court for the parish of Orleans and of the supreme court of the State of Louisiana, rendered in the case entitled "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company," being # 11166 of the docket of said supreme court; and the said Henderson and the said Leovy claim that your orator's title hereinbefore set forth only extends to and includes thirteen hundred and twenty acres of the land herein first described and claimed by your orator, and that the said subsequent sales of said portions of said land by the said State to them, said Henderson and said Leovy, are therefore valid. Your orator, on the contrary, avers and charges that its said title

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embraces the whole of said land from the Mississippi river and the Grand pass back to West bay, excepting the lots fronting on the river and section sixteen, in range thirty, and that the said subsequent sales by said State to said Henderson and said Leovy of said portions of said land are illegal, null, and void, and that the said decision of said State courts in said case of "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company" is illegal, null, and void, and of no force or effect, because said State courts were without jurisdiction to entertain or determine said case, and that said decision is erroneous.

4. Now, your orator avers that the said patent # 526, so issued by the State of Louisiana to C. C. Packard, Sept. 30th, 1869, and under which title your orator so holds said property, as aforesaid, transfers and conveys all the lands in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, southeastern land district of Louisiana, between the Mississippi river and West bay,
6 excepting lots fronting on the said river, and sections sixteen, in both ranges; and your orator avers that said patent of the State of Louisiana was a sale of the said land in its entirety, just as it was acquired by the State from the United States, and without any reservation of batture or riparian accretions, and the said State of Louisiana has so interpreted said patent # 526 ever since its issuance in 1869 by assessing the whole of said land under said patent and collecting taxes thereon and by cancelling subsequent entries made upon said land, which will more fully appear from the certified copy of the proceedings had before the register of the land office of said State concerning the cancellation of the patents of the State of Louisiana # 2050 and # 2072, issued to G.W.R. Bayley, agent, on April 27th and June 12th, 1875, and the finding and action of said register, dated August 22nd, 1888, hereto annexed and made part of this bill and marked Exhibit F.

5. Further, your orator avers that the said decision of the civil district court for the parish of Orleans and of the supreme court of the State of Louisiana in the said case of the "State of Louisiana *vs.* Chas. C. Buck and The Plaquemines Tropical Fruit Company" is erroneous and incorrectly interprets your orator's rights under the said title, and that said decision is null and void and of no force or effect for the reason that the plaintiff therein was the State of Louisiana, the defendant Chas. Collins Buck was then and is now a citizen of the State of Maryland, and the other defendant therein, The Plaquemines Tropical Fruit Company, your orator, was at the time of said suit and is now a corporation organized and existing under the laws of the State of New Jersey and a citizen of the State of New Jersey, and the said civil district court for the parish of Orleans,
7 State of Louisiana, and the said supreme court of the State of Louisiana had no authority or jurisdiction to hear and determine the controversy presented in the case, because the first paragraph of section two (2) of article III of the Constitution of the United States provides that "the judicial power (of the United States) shall extend * * * to controversies * * * between a State and citizens of another State," and because the second paragraph of

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section 2 of article III of the Constitution of the United States provides that "in all cases effecting ambassadors or other public ministers or consuls and those in which a State shall be a party, the Supreme Court (of the United States) shall have original jurisdiction;" and because the said courts of the State of Louisiana do not and cannot exercise any portion of the judicial power vested in the United States by section 1 of article III of the Constitution of the United States; and your orator now specially invokes and pleads against the operation and effect of said decision of said State courts the said Federal constitutional provision and guarantee and immunity against suit by the State of Louisiana in her own courts.

6. Further, your orator avers that unless the said Henderson and the said Leovy are restrained by an injunction they will continue to assert title in themselves to portions of said land, and to trespass thereon, and remove the timber and willows therefrom, and will carry out their intention of closing said Red and Tiger passes, and so will cause irreparable damage to your orator, and will execute their threat to divide said land into small parcels or lots and place a great number of persons on said land, and so will necessitate a multiplicity of suits by your orator in order to maintain its title and possession.

7. Your orator avers that the portions of said land to which
8 each of said defendants assert title adversely to your orator exceed in value the sum of five thousand ($5,000) dollars.

Wherefore your orator avers that it is without adequate remedy at law in the premises, and is therefore compelled to come into a court of equity, where such matters are more properly cognizable and relievable. To the end, therefore, that your orator may have such relief as can only be granted by a court of equity, your orator prays:

1. That an injunction issue herein *pendente lite* against each of said defendants, their agents, representatives, servants, and employees, and that on the final hearing the same be made perpetual, forever restraining and prohibiting the said William Henderson and the said Henry J. Leovy and their agents, representatives, servants, and employees, from asserting any title or claim whatsoever in or to any portion of said land adverse to plaintiff, and from trespassing upon any portion of said land, and from cutting timber and willows thereon and removing and selling the same, and from plowing, cutting ditches, or otherwise destroying any portion of said land, and from dividing said land into parcels or lots, and from selling or renting or attempting to sell or rent to any person or persons the whole or any part of said land, and from placing any persons on said land, and from closing up either Red, Tiger, or any other pass upon or through said land, and from in any way interfering with plaintiff's possession and enjoyment of said land, and from in any manner injuring the same.

2. That the said defendants and each of them answer all and singular the allegations in the premises, not under oath (their oath being expressly waived), and show, if they can, why your orator should not have the relief prayed for, and that on final hearing

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there be judgment against said defendants and each of them
9 and in favor of your orator, decreeing its said title to embrace and include the whole of said land first herein described and recognizing the validity of said title and quieting your orator in its possession of said land.

And may it please your honors to grant unto your orator writs of subpœna, under the seal of this court, addressed to each of said defendants, commanding them and each of them, at a time fixed, to appear and answer herein (but not under oath), and to abide by and perform all the orders and decrees of this honorable court in the premises, and that your orator may have such other and further and general relief as the nature of the circumstances of the case and equity and good conscience require.

And your orator will ever so pray.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Comp't.

(Signed) PLAQUEMINES TROPICAL FRUIT CO.,
Per CHAS. COLLINS BUCK,
Vice-President.

Let the defendants show cause on Wednesday, February 13th, 1895, at 11 o'clock a. m., why a preliminary injunction should not issue in the above cause.

New Orleans, Feb. 11, 1895.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

10 On this 11th day of February, 1895, before me personally appeared Charles Collins Buck, the vice-president of The Plaquemines Tropical Fruit Company, the complainant above named, who, being by me duly sworn, deposes and says that he is the vice-president of the Plaquemines Tropical Fruit Company and familiar with its business, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) CHAS. COLLINS BUCK.

Subscribed and sworn to before me this 11th day of February, 1895.

(Signed) E. R. HUNT,
U. S. Commissioner. [SEAL.]

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Affidavit of Thomas Denesse.

Filed February 11, 1895.

Circuit Court of the United States for the Fifth Circuit and Eastern Dist. of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WILLIAM HENDERSON and HENRY J. LEOVY. } No. 12375.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

On this eleventh (11) day of February, 1895, in the city of
11 New Orleans, State of Louisiana, personally came and appeared Thomas Denesse, who, being first duly sworn, did depose and say—

That he lives at Venice, parish of Plaquemines, Louisiana, near the mouth of the Mississippi river.

That he is well acquainted with the land in that parish, situated in township twenty-one (21) south, ranges thirty and thirty-one (30 & 31) east, lying west of the Mississippi river and Grand pass, owned by the Plaquemines Tropical Fruit Company; that he knows that William Henderson and Henry J. Leovy claim title to portions of said land, and through their agents and employees have and are still cutting willows on said land and removing and selling the same.

Further, deponent saith that the said William Henderson and Henry J. Leovy have within the last four months — deponent has heard Robert S. Leovy, who is generally known as the agent, representative, and employee of the said Henderson and the said H. J Leovy, assert that they intend to close Red and Tiger passes through said land and divide said land into small parcels or lots and sell or rent the same to a large number of persons.

Further this deponent saith not.

(Signed) T. DENESSE.

Sworn to and subscribed before me, at the city of New Orleans, on this 11th day of February, A. D. 1895.

[SEAL.] (Signed) GEO. M. BARNETT,
Notary Public.

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Copy of Rule for Injunction.

Issued February 12th, 1895.

12 Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WILLIAM HENDERSON & HENRY J. LEOVY. } No. 12375. In Equity.

Order on Bill of Complaint.

Let the defendants show cause on Wednesday, February 13th, 1895, at 11 o'clock a. m., why a preliminary injunction should not issue in the above cause.

New Orleans, Feb. 11, 1895.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 12th day of February, 1895.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., February 12, '95, and on the same day, month, and year I served a copy of the within rule for injunction on William Henderson and Henry J.
13 Leovy by handing the same to each of them in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Subpœna in Chancery to William Henderson.

Issued February 11, 1895.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon William Henderson to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1895, then and there to answer a bill in chancery filed against him and another, wherein Plaquemines Trop-

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ical Fruit Company is complainant and said William Henderson and another are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 day [SEAL.] of February, in the year of our Lord one thousand eight hundred and ninety-five, and the 119 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit 14 court on or before the first Monday of March, 1895; otherwise the bill may be taken *pro confesso.*

(Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Feb'y 11, '95, and on the same day, month, and year I served a copy of the within subpœna in chancery on William Henderson by handing same to him in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Subpœna in Chancery to Henry J. Leovy.

Issued February 11, 1895.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon Henry J. Leovy to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1895, then and there to answer a bill in chancery filed against him and another, wherein Plaquemines Tropical Fruit Company is complainant and said Henry J. Leovy and another are defendants.

Herein fail not, and have you then and there this writ, 15 with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 [SEAL.] day of February, in the year of our Lord one thousand eight hundred and ninety-five, and the 119 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

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The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of March, 1895; otherwise the bill may be taken *pro confesso*.

(Signed) E. R. HUNT, *Clerk*.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., February 11, '95, and on the same day, month, and year I served a copy of the within subpœna in chancery on Henry J. Leovy by handing same to him in person in New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
D'y U. S. Marshal.

Stipulation.

Filed February 14, 1895.

Circuit Court of the United States, Eastern District of Louisiana.

16 PLAQUEMINES TROPICAL FRUIT COMPANY
v.
WILLIAM HENDERSON and HENRY J. LEOVY. } In Equity. No. 12375.

Stipulation.

It is hereby stipulated and agreed between the parties in the above-entitled cause that pending final decree in this court defendants will not close or alter Red pass and Tiger pass or any other pass through or adjacent to said land in township 21 south, ranges 30 and 31 east, southeastern land district, Louisiana, or remove or disturb complainant's property thereon, if any there be; provided that said defendants may cut, remove, and sell willows growing in the portion claimed by defendants, keeping an accurate account thereof and accounting therefor to complainant in case the title shall be finally decreed to be in complainant; and both parties further agree to speed said cause and bring to speedy issue and hearing the questions involved therein.

And meanwhile complainant will not press its motion for injunction *pendente lite* unless there be a violation on the part of the defendants of the terms of this stipulation, and then only after due notice.

Nothing herein is to be considered as a waiver by either party of any of his or its rights or an admission in any way of the claims of the other.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant.

(Signed) LEOVY & BLAIR AND
VICTOR LEOVY,
Solicitors for Defendant.

17 *Appearance.*

Extract from the chancery order book.

MONDAY, *March* 4, 1895.

PLAQUEMINES TROPICAL FRUIT CO. *vs.* H. J. LEOVY & WM. HENDERSON. } No. 12375.

Now come the defendants, through Jos. P. Blair and Victor Leovy, and enter their appearance to the bill of complaint.

Notice of Filing of Plea.

Extract from the chancery order book.

MONDAY, *March* 4, 1895.

PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* H. J. LEOVY & WM. HENDERSON. } No. 12375.

The defendants, through Sol'rs Jos. P. Blair and Victor Leovy, have this day filed a plea to the bill herein.

Plea of Defendants.

Filed March 4, 1895.

United States Circuit Court, Fifth Circuit and Eastern District of Louisiana. In Equity.

THE PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* WILLIAM HENDERSON and HENRY J. LEOVY. } Number 12375.

The joint and several plea of William Henderson and Henry J. Leovy, defendants herein, to the bill of complaint of The
18 Plaquemines Tropical Fruit Company, complainant.

These defendants, by protestation and not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, for plea to the whole of said bill aver—

That heretofore, to wit, on the twenty-fifth day of January, 1892, the State of Louisiana instituted suit and filed its petition in the civil district court in and for the parish of Orleans and State of Louisiana against Charles C. Buck and The Plaquemines Tropical Fruit Company, which is the complainant in this cause, said suit in said State court being entitled State of Louisiana *vs.* Charles C. Buck *et al.* and numbered 34829 on the docket thereof, and in said petition the said State alleged that it was the owner of certain lands

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in the parish of Plaquemines, in this State, on the west side of the Mississippi river, being township twenty-one south, ranges thirty and thirty-one east, southeastern district, being over thirty-two thousand acres, and that it was the owner of all said land in its entirety except the front lots sold by the United States prior to the year 1849 and except sections 16 in both ranges, and also excepting a tract of land between said lots and what was known as "West bay," as per plan in the State land office, at Baton Rouge, said excepted tract being thirteen hundred and twenty acres, which it had been asserted had been sold by the State of Louisiana in September, 1869, to C. C. Packard, but which, though not claimed by the State in said suit, the State did not admit to have been so sold; and the State further alleged in said petition that it had become the owner of said above-described property by grant and donation from the United States by act of Congress
19 approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to drain the swamp lands within their limits," and also by act of Congress approved March 3rd, 1857, and by conformity with the requirements of law relating thereto; and the said State further alleged that said defendants, the said Buck, described in said petition as residing in Baltimore, Maryland, but then in New Orleans, and the said Plaquemines Tropical Fruit Company, likewise described as said to have been incorporated under and by virtue of the laws of New Jersey, of which said Buck was president, had denied the said State's ownership of said property, and had slandered its claim thereto, and had set up ownership in themselves, falsely claiming title through one Robert M. White, who falsely claimed through patent No. 526, to C. C. Packard from the State of Louisiana, dated in September, 1889, and that in consequence of said illegal acts of said defendants and of each of them it had been damaged to the extent of eighteen hundred dollars, and that the said Buck had been and then was trespassing on said lands, cutting timber thereon and removing the same therefrom and cutting ditches, and otherwise destroying portions of said property and greatly impairing its value, thus causing irreparable injury to the State, and that a writ of injunction was necessary; and, after praying for citation in due form of said defendants, the said State further prayed for an injunction to issue forthwith against both defendants, restraining and prohibiting them and each of them and their officers and agents from slandering the title of the said State to the said land or denying its title thereto, and enjoining and prohibiting them and each of them and their agents from trespassing on said land above described, and from taking or keeping possession of any part thereof, and enjoining and
20 forbidding them and each of them from interfering in any manner with the possession of the said State and its full exercise of ownership over all said land, and that it have judgment, after due proceedings, perpetuating said injunction, and also that it recover of said defendants *in solido* the sum of eighteen hundred dollars, with interest, and for costs.

That a preliminary injunction was forthwith issued by said State

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court enjoining and restraining said defendants and each of them as prayed for in said petition.

That both of the said defendants in said cause were duly served with notice of said suit and duly cited to appear and answer the same; that on or about January 29, 1892, the said defendant, Buck, came into court and filed and exception of no cause of action to the said suit of the said State, and prayed that the said suit be dismissed; that on February 19, 1892, both said defendants appeared and averred that their domicile was in the States of New Jersey and Maryland—"*i. e.*, C. C. Buck of Maryland, and The Plaquemines Tropical Fruit Company of New Jersey"—and that the acts complained of were alleged to have *been* taken place in the parish of Plaquemines, and therefore that the said civil district court of the parish of Orleans was without jurisdiction, and they prayed that the said suit of the State be dismissed.

That on or about February 19, 1892, said exceptions of no cause of action and of want of jurisdiction were heard and tried by said civil district court, and after hearing the pleadings and arguments of counsel on both sides, and for reasons orally assigned, the said court, considering the law to be with plaintiff and against exceptors, ordered that both exceptions be overruled.

That on or about February 23, 1892, the said defendants
21 filed their answer to said petition in said suit, with reservation of the benefit of said exceptions, putting at issue the allegations of said petition and averring ownership and possession of the property described therein, and praying for the dismissal of said suit and the dissolution of said injunction, and that their right to recover damages be reserved, and for general relief.

That on or about April 16, 1892, the said State, with leave of court first had and obtained, filed in said cause a supplemental and amended petition, in which it repeated its allegations in respect to the ownership of said land described in its said original petition and in respect to defendants' slander of title thereto, and alleged that said defendants had falsely alleged that they had acquired title to said land by virtue of an act of sale from Charles Louque, passed before C. T. Soniat, notary public, on November 27, 1891, and that on the same day the said Louque had acquired title thereto from one R. M. White, who had acquired his title from E. E. Norton, assignee in bankruptcy of C. C. Packard, who had acquired the said land by patent No. 526 from the State of Louisiana, in September, 1869; and the said State further alleged that the fact was and was well known to said defendants that the said patent, if it conveyed anything to said C. C. Packard, conveyed by its terms and in fact only thirteen hundred and twenty acres, for which only three hundred and thirty dollars was paid, being twenty-five cents per acre, the then price per acre for such lands owned by the State; and it was further alleged in said supplemental and amended petition that the said false statements and pretences of the said defendants and of each of them created and constituted a cloud on the title of the State and prevented the sale of said lands; that the

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lands thus claimed by defendants and owned by the State
22 were worth over seven thousand dollars, and that defendants had trespassed on said lands and by said trespass the State had been damaged in the sum of two thousand dollars; and in said supplemental and amended petition the said, State, prayed that said defendants be each duly cited, and, after due proceedings had, that there be judgment in favor of the said plaintiff State, and against said defendants for the sum of thirty-eight hundred dollars damages, and that the said State be recognized as the owner of the land described in the original petition, with all the rights pertaining thereto, and quieted in its title and possession thereof, and that it be declared and adjudged that said defendants have no title to the said land, and they and each of them be and remain enjoined to the extent and in the manner prayed for in the original petition.

That both of said defendants in said suit were duly served with notice of and cited to answer said supplemental and amended petition, and on or about May 2, 1892, they both appeared in court for the purpose of excepting thereto, and for cause of exception said that the said supplemental and amended petition altered the substance of the demand of the said original petition and raised new issues; wherefore they prayed for the dismissal thereof; which exception came on to be heard on May 9, 1892, and was argued by counsel on both sides and overruled by the said court.

That thereafter, to wit, on May 19, 1892, said defendants appeared in said court and averred that said State court was without jurisdiction over said cause because the land concerned was situated in the parish of Plaquemines, in this State, and neither of defendants resided within the jurisdiction of said court, and each of them had a domicile in said parish of Plaquemines; and, subject to said
23 plea, said defendants answered said supplemental and amended petition and put at issue the allegations thereof; and, for further answer thereto, averred that all the unsurveyed sea marsh in township twenty-one south, ranges thirty and thirty-one east, lying west of the Mississippi river and Grand pass, parish of Plaquemines, except certain lots, of small depth, fronting on said Mississippi river, and section 16, in range thirty (school section), was sold and parted with by the plaintiff State, for a valuable consideration, in 1869 to C. C. Packard, and the right to all accretions to said property passed with said sale, and that said property was subsequently sold and transferred by the assignee of said Packard to R. M. White, and afterwards by said White to Chas. Louque, who, on November 27, 1891, by act before Chas. T. Soniat, notary public, sold and transferred the same to said defendant, The Plaquemines Tropical Fruit Company; and said defendants further averred in their said answer that they had been informed from an examination of the public records of this State and by the register of its land office that the State had no claim to said land, and on the faith of said information and representations had so purchased said land and made improvements thereon, and that the claim set up by the State was an act of bad faith and a great wrong; and they fur-

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ther averred that said The Plaquemines Tropical Fruit Company, defendant, had acquired said land from the said Charles Louque with full warranty of title and it was entitled to have said Louque made a party to said suit and called to defend said title; and the said defendants prayed in their said plea and answer that their said plea to the jurisdiction be sustained, and, should it be overruled, that the said Charles Louque be cited and called in warranty, and for a trial by jury, and that, after due proceedings, there be judgment in favor of defendants and against the plaintiff State,

24 dismissing its suit and decreeing the defendant The Plaquemines Tropical Fruit Company to be the sole and lawful owner of said lands, and that, should there be judgment against defendants, they have like judgment against the said warrantor, Louque.

That thereupon the said Charles Louque was duly cited and called in warranty, and on June 8, 1892, appeared in said court and filed his answer, wherein, after pleading a general denial except as to special admissions, he admitted the purchase of said land from one R. M. White by act before the said Soniat, notary public, and averred that he had no personal interest therein, but purchased the same at the request and for the use and benefit of the said Charles C. Buck and the said The Plaquemines Tropical Fruit Company, to whom he immediately transferred the same before the same notary; and further averred that the said R. M. White was bound in warranty to him, and the said Louque prayed that the call in warranty against him be dismissed; that, should it be sustained, the said White be called and cited in warranty; and he further prayed for trial by jury and for general relief.

That thereupon R. M. White was cited and called in warranty in said cause, and on June 17, 1892, appeared in said court and filed an answer, wherein he pleaded the general issue and asked to be thence dismissed with costs, and for general relief.

That thereafter, on November 27, 1892, the said defendants pleaded to the said State's demand the prescription of five and ten years, and further pleaded estoppel, based on the alleged recognition of the validity of the title under which they claimed said land by the register of the land office of the State.

That said cause was duly called and tried and evidence offered on behalf of the plaintiff State and on behalf of the said

25 defendants, and, after being argued by counsel, the said cause was on November 29, 1892, duly submitted to the jury, who found a verdict to the effect that The State of Louisiana, plaintiff, was the sole owner of the land claimed in its aforesaid petition and was entitled to the possession thereof, and the said defendants, Buck and The Plaquemines Tropical Fruit Company, had no title thereto; and they further found that the rights of said defendants and of the said Charles Louque against the said defendant, R. M. White, should be reserved, and the said verdict was thereupon ordered recorded and the jury discharged.

That on December 2, 1892, the said defendants filed in said court

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an application for a new trial; which application came on to be heard on December 12, 1892, and was refused by the said court.

That thereafter, on December 12, 1892, the said civil district court rendered judgment in said cause, and, considering the said verdict of the jury and the law applicable thereto, it was ordered, adjudged, and decreed that the State of Louisiana was the sole owner of the land claimed in the petition and was entitled to the possession thereof, and that the defendants, Charles C. Buck and The Plaquemines Tropical Fruit Company, had no title thereto, said land being described in said judgment as follows, to wit: Certain lands in the parish of Plaquemines, being township twenty-one (21) south, ranges thirty and thirty-one (30 and 31) east, southeastern land district of Louisiana, being over thirty-two thousand acres of what is known as and called swamp and overflowed land, except the front lots, sold by the United States prior to the year 1849, and except sections 16 in both ranges, and also a tract of land, containing thirteen hundred and twenty (1,320) acres, between said lots and what was
26 known as West bay, as per plan in the State land office at Baton Rouge, a duly certified copy of which was filed in this suit November 23, 1892, marked "A. C.," and certified as follows: "Surveyed in 1836 by G. T. Connelly; State land office, Baton Rouge, La., Nov. 28, 1891. (Signed) John S. Lanier, register;" which said plan was made a part of said judgment for purposes of description and identification; and it was further ordered, adjudged, and decreed that the rights of the above-named defendants and of the said Charles Louque against the defendant R. M. White be reserved; and it was further ordered, adjudged, and decreed that the injunction theretofore issued in said cause, so far as it restrained said defendants or any of them from interfering with the plaintiff State's full rights of ownership and possession of said land hereinabove described, be made peremptory and absolute; and it was further ordered that said defendants pay the costs, and said judgment was duly signed on December 16, 1892.

That thereafter, on December 23, 1892, after their motion for a new trial had been refused, the said defendants in said suit took an appeal from said judgment of the civil district court to the supreme court of the State of Louisiana, and after hearing argument and taking the same under advisement the said supreme court on November 20, 1893, rendered a decision and judgment affirming in all respects the aforesaid rulings and judgment of the said civil district court; that said defendants on November 27, 1893, filed an application in the said State supreme court for a rehearing of said cause, which application for a rehearing was refused on April 23, 1894, on which day the said judgment and decree of the said supreme court became final and conclusive.

That subsequently a writ of error in the aforesaid cause
27 was obtained by said defendants from the Supreme Court of the United States, directed to the said supreme court of the State of Louisiana, which writ of error was, on or about October 22, 1894, dismissed by the Supreme Court of the United States, which judgment of dismissal is final and conclusive, and the man-

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date of the Supreme Court of the United States in accordance therewith has been sent down and filed in the State supreme court.

Now, these defendants further aver that the said civil district court in and for the parish of Orleans and State of Louisiana and the said supreme court of the State of Louisiana were courts of competent jurisdiction, and had jurisdiction to try and decide the said suit and the appeal allowed therein, entitled and numbered as aforesaid, and that the said judgments and decrees are final and upon the merits.

And they further aver that the complainant herein, The Plaquemines Tropical Fruit Company, was one of the defendants in said cause in said State court, and that the other defendant in said cause, Charles C. Buck, was the president of said complainant; that the land which by said judgment of said State court was adjudged and decreed to belong to the State of Louisiana is the identical land of which the complainant now claims in its bill of complaint to be the owner, except that its present bill includes, in the general description of land claimed to be owned by complainant, the thirteen hundred and twenty acres which the State expressly excepted from its said suit in said State court; that the land stated in complainant's bill of complaint herein to have been acquired by these defendants from the State of Louisiana, and of which the complainant now claims to be the owner and in respect to which the relief herein prayed for is asked, based on said claim of ownership,

28 is a part and portion of the land to which the complainant set up title in the said suit in the State court, and which in said suit was adjudged and decreed to belong to the State, whose rights of ownership and possession were protected by injunction, as aforesaid, and now in force; that these defendants acquired said land from the State subsequent to the judgment rendered, as aforesaid, in the said State court and affirmed on appeal, and are privies in the estate to the State, in whose favor said judgment was rendered; that the title under — said complainant now claims said land is the same title which it set up and relied upon in the said suit in the said State court.

All which said several above-mentioned matters and things these defendants do aver, and plead the said judgment of the said civil district court in and for the parish of Orleans and State of Louisiana and the said affirmance thereof by the supreme court of the State of Louisiana in bar to the said complainant's said bill, and pray the judgment of this honorable court whether they should make any further answer thereto.

Wherefore defendants pray to be hence dismissed with all their costs and charges in this behalf most wrongfully sustained.

(Signed) J. P. BLAIR,
VICTOR LEOVY,
Solicitors for Defendants.

Henry J. Leovy and William Henderson, being severally sworn, do severally depose and says that they are defendants in the above-

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entitled cause, and that the foregoing plea is not interposed
29 for delay, and that the same is true in point of fact.

(Signed) HENRY J. LEOVY.
WM. HENDERSON.

Sworn to & subscribed before me this 2nd day of March, 1895.
[SEAL.] (Signed) ROB'T P. UPTON, *Not. Pub.*

I hereby certify that, in my opinion, the foregoing plea is well founded in point of law.

(Signed) J. P. BLAIR,
Of Counsel for Defendant.

Motion and Order Fixing Plea for Hearing.

Entered and filed April 9th, 1895.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WM. HENDERSON *et al.* } No. 12375.

On motion of Duane E. Fox and Gurley & Mellen, of counsel for plaintiff herein—

It is ordered by the court that the plea herein filed by the defendants be set for trial on Saturday, the fourth day of May, 1895, at 11 o'clock a. m., and that J. P. Blair & Victor Leovy, counsel of record for said defendants, be notified thereof.

30 *Amendment to Bill.*

Entered and filed June 24, 1895.

Circuit Court of the United States for the 5th Circuit & Eastern Dist. of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY
vs.
WM. HENDERSON *et al.* } No. 12375.

On motion of Duane E. Fox and Gurley & Mellen, solicitors for complainant—

It is ordered that complainant be allowed to amend the bill herein filed by inserting therein, after the words "New Jersey," on the 11th line of the 5th paragraph, the following words, viz: "And the record of said suit, consisting of the pleadings and evidence in said State court, so showed," and by striking out the word "citizen," in said line, and substituting therefor the word "corporation."

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It is further ordered that the plea filed herein to the original bill be considered as made to the bill as amended.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

June 24, 1895.

Hearing and Submission as to Sufficiency of Plea.

Extract from the minutes, April term, 1895.

NEW ORLEANS, MONDAY, *June* 24, 1895.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

31 PLAQUEMINES TROPICAL FRUIT COMPANY *vs.* WM. HENDERSON & HENRY J. LEOVY. } No. 12375.

This cause came on to be heard upon the sufficiency of the plea filed herein by defendants, J. P. Blair appearing for defendants in support of plea, Duane E. Fox and Gurley & Mellen for the complainant, and was argued by the solicitors for the respective parties and submitted, when the court took time to consider.

Decree as to Sufficiency of Plea.

Entered and filed June 27, 1895.

Circuit Court of the United States, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO. *vs.* WM. HENDERSON & H. J. LEOVY. } 12375. In Equity.

This case came on to be heard at a former day upon the plea herein filed by the defendants to the bill of complaint and, after argument of counsel, was submitted.

On consideration whereof, it is ordered that the said plea of defendants be adjudged sufficient.

(Signed) CHARLES PARLANGE, *Judge.*

June 27, 1895.

32 *Decree Dismissing Bill.*

Entered and filed July 1, 1895.

United States Circuit Court, Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT COMPANY *versus* H. J. LEOVY & WM. HENDERSON. } No. 12375. In Equity.

This cause came on to be further heard at this term, and counsel for complainant having stated in open court that complainant does

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not dispute, but admits, the correctness in point of fact of defendants' plea in bar, and does not desire to traverse the same, and counsel for both parties desiring and requesting a final decree at this term, and thereupon and in consideration thereof, and of the decree heretofore rendered in this cause in favor of the sufficiency of said plea, it is ordered, adjudged, and decreed that defendants' said plea in bar, filed herein on March 4, 1895, is sufficient and is true in point of fact, and accordingly it is ordered, adjudged, and decreed that the said bill of complaint herein be, and the same is hereby, dismissed with costs to the defendants, to be taxed.

(Signed) CHARLES PARLANGE, *Judge.*

New Orleans, July 1, 1895.

Petition for Appeal to Supreme Court of the United States.

Filed June 26, 1896.

33 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO., Complainant, Appellant, v. WILLIAM HENDERSON and HENRY J. LEOVY, Defendants, Respondents.	In Equity.

The above-named complainant, Plaquemines Tropical Fruit Company, conceiving itself aggrieved by the order entered on July 1, 1895, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant and Appellant, Plaquemines Tropical Fruit Company.

New Orleans, Louisiana, June —, 1896.

Order.

And now, to wit, on June 26th, 1896, it is ordered that the appeal be allowed as prayed for on complainant giving bond, with sufficient security, in the sum of two hundred and fifty dollars, said ap-
34 peal to be returnable to the U. S. Supreme Court within thirty days from this date.

New Orleans, La., June 26, 1896.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

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Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

PLAQUEMINES TROPICAL FRUIT CO., Plaintiff, Appellant,
v.
WILLIAM HENDERSON and HENRY J. LEOVY, Defendants, Respondents.
} In Equity.

Assignment of Error.

And now, on the 26th day of June, 1896, comes the said complainant, by Gurley & Mellen and Duane E. Fox, its solicitors, and says that the decree in said cause is erroneous and against the just rights of said complainant, for the following reasons:

First. Because the bill of complaint and plea upon which decree herein was given showed that the suit of The State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, the judgment in which is held by said decree to be a bar to this suit, was a suit by a State against citizens of other States, and was shown to be so by the record therein, to which class of suits section 2 of article III of the Constitution of the United States declares "the judicial power of the United States shall extend," and which must therefore be tried either in a Federal court exercising the "judicial power" of the United States or in some court from which the
35 defendants may remove or appeal the cause on the merits to a Federal court, while said cause of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was heard and determined in the local courts of the State of Louisiana, from which the defendants could neither remove nor appeal on the merits to any court exercising the "judicial power" of the United States, and therefore the judgment therein was without jurisdiction and void and no bar to this suit.

Second. Because the bill of complaint and plea showed that said suit of the State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was not a suit brought in the exercise or assertion of the sovereignty of said State to execute penal laws, enforce penalties, collect taxes, or otherwise, but was an ordinary suit to determine the ownership of certain land, in which the State appeared exactly as an ordinary litigant, and therefore the provision in section 2 of article III of the Constitution of the United States, that the judicial power of the United States "shall extend to" said cause, can be enforced without diminution or restriction of the sovereign powers and duties of said State, and it should be so enforced, and therefore the judgment in said suit is no bar to this suit.

Third. Because a Federal court, to wit, the Supreme Court of the United States, was at the time of said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company fully invested by paragraph 2 of section 2 of article III of the Constitution of the United States with jurisdiction to hear and finally determine said

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cause, while the courts of the State of Louisiana have never been granted such jurisdiction by the Constitution of the United States, and therefore the judgment in said suit was without jurisdiction and void and no bar to this suit.

36 Fourth. Because the local courts of Louisiana could not exercise jurisdiction in a case to which the Constitution of the United States declares the judicial power of the United States shall extend, except after such legislation by Congress as will enable the case to be removed or appealed on the merits to some Federal court, which legislation has been enacted by Congress covering the other cases to which the judicial power of the United States extends, but accidentally or intentionally omitting suits by a State against citizens of other States, and therefore the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company were without jurisdiction and the judgment therein was void and no bar to this suit.

Fifth. Because the failure of Congress, accidental or otherwise, to pass a law providing for the appeal or removal to a Federal court of a certain class of the cases to which the Constitution of the United States declares the judicial power of the United States shall extend cannot have the effect of making the jurisdiction of the courts of a State, at the option of such State, final and exclusive of the jurisdiction of the courts of the United States, and therefore the judgment of the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

Sixth. Because, until appropriate action by Congress providing for the supervision by the Federal courts, by removal or appeal, over cases between a State and citizens of other States, to which the Constitution of the United States declares the judicial power of the United States shall extend, the jurisdiction in such cases re-

37 mains exclusively where it was vested by the Constitution, to wit, in the Supreme Court of the United States; that such jurisdiction was vested in said court exclusively at the time of the said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, and therefor- the judgment in said suit was without jurisdiction and void and no bar to this suit.

Seventh. Because Congress cannot nullify the Constitution of the United States by failing to provide a Federal court for the trial of cases to which the Constitution declares the judicial power of the United States shall extend, nor can Congress bestow concurrent jurisdiction upon the courts of the States in such cases without providing the correlative power of removal or appeal on the merits to some Federal court, so that the jurisdiction of the State courts may not be final and exclusive of the courts and judicial power of the United States, and therefore, no such appeal or removal having been provided for by Congress in suits by a State against citizens of other States, the judgment of the courts of Louisiana in said case of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

Wherefore the said complainant prays that the said decree be re-

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versed, and that the said court may be directed to enter a decree in accordance with the prayer of the bill.

(Signed) GURLEY & MELLEN,
DUANE E. FOX,
Solicitors for Complainant.

38 *Bond for Appeal.*

Filed June 27, 1896.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Plaquemines Tropical Fruit Company and Piercy J. Stakelum, are held and firmly bound, jointly and severally, unto William Henderson and Henry J. Leovy in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said William Henderson and Henry J. Leovy, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 27th day of June, in the year of our Lord eighteen hundred and ninety-six.

Whereas the said Plaquemines Tropical Fruit Company having heretofore, to wit, on the 26th day of June, 1896, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 1st day of July, 1895, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Plaquemines Tropical Fruit Company *vs.* William Henderson and Henry J. Leovy, No. 12375 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Plaquemines Tropical Fruit Company shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be
39 void; otherwise to remain in full force and virtue.

(Signed) PLAQUEMINES TROPICAL FRUIT CO.
CHAS. COLLINS BUCK,
V.-President. [L. S.]
(Signed) PIERCY J. STAKELUM. [L. S.]

Approved:
N. O., June 27th, 1896.
(Signed) CHARLES PARLANGE, *U. S. Judge.*

(*Affidavit on Reverse.*)

UNITED STATES OF AMERICA, *District of Louisiana,* } *ss:*

Personally appeared Piercy J. Stakelum, who, being duly sworn, deposes and says that he is the surety on the within bond; that he

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resides in New Orleans, La., and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) PIERCY J. STAKELUM.

Subscribed and sworn before me this 27th day of June, 1896.

(Signed) E. R. HUNT,
Commissioner U. S. Circuit Court, District of Louisiana.

40 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to William Henderson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Plaquemines Tropical Fruit Company is complainant and appellant and William Henderson and Henry J. Leovy are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Plaquemines Tropical Fruit Company, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25 day of June, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES PARLANGE, *Judge.*

41 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12375. Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy. Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed July 8, 1896. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 26, '96.

On this 8th day of July, 1896, before the undersigned authority personally came and appeared John Early, who, being duly sworn, deposes and says that he is a deputy U. S. marshal for the eastern district of La.; that on the 26th day of June, 1896, he served the within writ on William Henderson by handing the same to him in person in the city of New Orleans, Louisiana.

JOHN EARLY.

Sworn to and subscribed before me on this 8th day of July, 1896.

H. J. CARTER,
U. S. Commissioner.

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42 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Henry J. Leovy, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Plaquemines Tropical Fruit Company is complainant and appellant and William Henderson and Henry J. Leovy are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said Plaquemines Tropical Fruit Company, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26 day of June, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES PARLANGE, *Judge.*

43 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12375. Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy. Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed July 8, 1896. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 26, '96.

On this 8th day of July, 1896, before the undersigned authority, personally came and appeared John Early, deputy United States marshal for the eastern district of Louisiana, who, being duly sworn, deposes & says that on the 27th day of June, 1896, he served the within writ on Mr. Henry J. Leovy, by handing the same to him in person, in the city of New Orleans, La.

JOHN EARLY.

Sworn to & subscribed before me on this 8th day of July, 1896.

H. J. CARTER,
U. S. Commissioner.

44 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 39 pages contain and form a full, complete,

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true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of, and the citations of appeal and proof of service in the case of, Plaquemines Tropical Fruit Co. *vs.* William Henderson & Henry J. Leovy, No. 12375 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10 day of July, A. D. 1896.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 10 day of July, A. D. 1896.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: Case No. 16,343. E. Louisiana C. C. U. S. Term No., 204. The Plaquemines Tropical Fruit Company, appellant, *vs.* William Henderson and Henry J. Leovy. Filed July 23rd, 1896.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 204.

PLAQUEMINES TROPICAL FRUIT COMPANY,
APPELLANT,

vs.

WILLIAM HENDERSON AND HENRY J. LEOVY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

This case arises by suit in equity filed on February 11, 1895, by the complainant, a corporation organized under the laws of New Jersey, to quiet title and restrain trespass by the defendants upon its lands situated in the Parish of Plaquemines in the State of Louisiana. The complainant traces its title from the United States through the State of Louisiana. (Record, 1–9; printed Record, 1–6.)

The defendants filed a plea, claiming title by purchase from the State of Louisiana and setting up as a bar to this suit a judgment obtained, prior to said purchase, by the State of Louisiana against the complainant herein in a suit involving the lands now in controversy (Record, 17–29; printed Record, 11–18). The material facts regarding said former suit, as shown by the pleadings herein, are as follows:

That suit was brought by the State of Louisiana on January 25, 1892, in the Civil District Court for the Parish of Orleans, State of Louisiana, against the Plaquemines Tropical Fruit Company and Charles C. Buck, its President, for slander of title and damages, a personal action (Record, 18–20; printed Record, 11–12). Later, by amendment, said suit for damages was converted into a suit to quiet title, a petitory action (Record, 21–22; printed Record, 13–14). No Federal question was involved, nor any question affecting the sovereignty of the State or the enforcement of its rights as a sovereign. The suit was "of a civil nature" (Wisconsin *vs.* Pelican Ins. Co., 127 U. S., 265) in which the State appeared as a claimant to certain land, exactly as any private litigant appears.

The petition showed that the Plaquemines Tropical Fruit Company was a corporation organized under the laws of New Jersey (Record, 19; printed Record, 12). An exception to the jurisdiction of the court was filed by the company, averring its domicile to be in New Jersey, and by Buck averring his domicile to be in Maryland (Record, 20; printed Record, 13). The exceptions were overruled and the defendants filed answer, reserving the benefit of their exceptions (Record, 21; printed Record, 13). The case having been tried, judgment was given decreeing that the State of Louisiana was the owner of the land. On appeal to the Supreme Court of the State said judgment was affirmed. Thereupon the defendants obtained a writ of error to the Supreme Court of the United States.

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The State of Louisiana then filed a motion to dismiss the writ of error on the ground that no Federal question was involved in the suit in the State courts and that the record in this Court presented no Federal question properly raised. United with said motion to dismiss was a motion to affirm the judgment of the Supreme Court of Louisiana on the ground that the writ of error was taken for delay only and that the grounds upon which jurisdiction was claimed were frivolous (Record, 26–27; printed Record, 16. Record in Supreme Court of the United States, October term, 1894, No. 735). On October 22, 1894, the writ of error was dismissed "for lack of jurisdiction" without opinion (*id.*), but the judgment of the State court was not affirmed.

The present case, therefore, involves but a single point, and that point arises under the Constitution of the United States and was raised in the appellant's bill of complaint (Record, 6–7, 30; printed Record, 4–5, 18–19), viz: The jurisdiction of the Civil District Court for the Parish of Orleans and the Supreme Court of the State of Louisiana to hear and determine the suit which is now pleaded in bar of the pending suit. If those courts had jurisdiction, the question of title between this complainant on the one hand and the State of Louisiana and her subsequent grantees on the other is *res judicata*. But if those courts were lacking in the judicial power to hear and determine the controversy, their judgment was null and void and cannot now be pleaded in bar.

The question presented for the judgment of this Court is the constitutional right of every State of the Union to have the merits of controversies involved in a suit brought against her citizens by any other State of the Union heard and determined in the courts of the United States. It involves the immunity of a citizen of any State of the Union from suit by any other State in her own courts and the denial of jurisdiction in any court of any State to take cognizance of any suit brought by that State against a citi-

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zen of another State on the ground that there is under the Constitution (at least until further legislation by Congress) an absolute lack of jurisdiction in such State court over the parties. The question also involves the right of one State to have the merits of a suit brought against her citizens by another State tried in the only court which, under the Constitution and laws as they now exist, has jurisdiction of such controversies, viz., the Supreme Court of the United States. A still further and most important question is also involved—whether this Court, having a jurisdiction specially conferred upon it by the Constitution itself (not merely by congressional legislation) for the most weighty reasons, to preserve the harmony and insure the permanence of the Nation, can be ousted of that jurisdiction, either by the inadvertence or design of Congress or by the pleasure of the officials and judges of a State. These questions have never, to our knowledge, been decided by the Supreme Court of the United States, upon a state of facts similar to that presented in this case.

SPECIFICATION OF ERRORS.

The appellant assigns the following as error in the decree of the court below:

First. Because the bill of complaint and plea upon which decree herein was given showed that the suit of The State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, the judgment in which is held by said decree to be a bar to this suit, was a suit by a State against citizens of other States, and was shown to be so by the record therein, to which class of suits section 2 of article III of the Constitution of the United States declares "the judicial power of the United States SHALL extend," and which must therefore be tried either in a Federal court exercising the "judicial power" of the United States or in some court from which the defendants may remove or appeal the cause

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on the merits to a Federal court, while said cause of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was heard and determined in the local courts of the State of Louisiana, from which the defendants could neither remove nor appeal on the merits to any court exercising the "judicial power" of the United States, and therefore the judgment therein was without jurisdiction and void and no bar to this suit.

Second. Because the bill of complaint and plea showed that said suit of The State of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was not a suit brought in the exercise or assertion of the sovereignty of said State to execute penal laws, enforce penalties, collect taxes, or otherwise, but was an ordinary suit to determine the ownership of certain land, in which the State appeared exactly as an ordinary litigant, and therefore the provision in section 2 of article III of the Constitution of the United States, that the judicial power of the United States "shall extend to" said cause can be enforced without diminution or restriction of the sovereign powers and duties of said State, and it should be so enforced, and therefore the judgment in said suit is no bar to this suit.

Third. Because a Federal court, to wit, the Supreme Court of the United States, was at the time of said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company fully invested by paragraph 2 of section 2 of article III of the Constitution of the United States with jurisdiction to hear and finally determine said cause, while the courts of the State of Louisiana have never been granted such jurisdiction by the Constitution of the United States, and therefore the judgment in said suit was without jurisdiction and void and no bar to this suit.

Fourth. Because the local courts of Louisiana could not exercise jurisdiction in a case to which the Constitution of

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the United States declares the judicial power of the United States shall extend, except after such legislation by Congress as will enable the case to be removed or appealed on the merits to some Federal court, which legislation has been enacted by Congress covering the other cases to which the judicial power of the United States extends, but accidentally or intentionally omitting suits by a State against citizens of other States, and therefore the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company were without jurisdiction and the judgment therein was void and no bar to this suit.

Fifth. Because the failure of Congress, accidental or otherwise, to pass a law providing for the appeal or removal to a Federal court of a certain class of the cases to which the Constitution of the United States declares the judicial power of the United States shall extend cannot have the effect of making the jurisdiction of the courts of a State, at the option of such State, final and exclusive of the jurisdiction of the courts of the United States, and therefore the judgment of the courts of Louisiana in said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

Sixth. Because, until appropriate action by Congress providing for the supervision by the Federal courts, by removal or appeal, over cases between a State and citizens of other States, to which the Constitution of the United States declares the judicial power of the United States shall extend, the jurisdiction in such cases remains exclusively where it was vested by the Constitution, to wit, in the Supreme Court of the United States; that such jurisdiction was vested in said court exclusively at the time of the said suit of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company, and therefore the judgment in said suit was without jurisdiction and void and no bar to this suit.

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Seventh. Because Congress cannot nullify the Constitution of the United States by failing to provide a Federal court for the trial of cases to which the Constitution declares the judicial power of the United States shall extend, nor can Congress bestow concurrent jurisdiction upon the courts of the States in such cases without providing the correlative power of removal or appeal on the merits to some Federal court, so that the jurisdiction of the State courts may not be final and exclusive of the courts and judicial power of the United States, and therefore, no such appeal or removal having been provided for by Congress in suits by a State against citizens of other States, the judgment of the courts of Louisiana in said case of Louisiana *vs.* Charles C. Buck and Plaquemines Tropical Fruit Company was without jurisdiction and void and no bar to this suit.

I.

JURISDICTION AND JUDICIAL POWER.

Jurisdiction "has reference to the power of the court, *over the parties*, over the subject-matter, over the *res* or property in contest, and to the *authority of the court* to render the judgment or decree which it assumes to make.

By jurisdiction over the subject-matter is meant the *nature of the cause of action* and of the relief sought; and this is conferred by the sovereign authority which organizes the court and is to be sought for in the general nature of its powers, or in authority specially conferred. * * * The *power* to render the decree or judgment which the court may undertake to make in the particular cause depends upon the nature and extent of the *authority* vested in it by law in regard to the subject-matter of the cause."

Cooper *vs.* Reynolds, 10 Wall., 308.

Inasmuch, then, as the sovereign is the source of jurisdiction and judicial power, the civil district court for the

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Parish of Orleans had no jurisdiction or judicial power unless it was derived from the sovereign. But in Louisiana, and in every other State, there are two sovereigns, the State and the United States, each supreme within the limits of its own sovereignty as defined by the Constitution of the United States. It is necessary to consider, therefore, first, in which of these sovereigns resides the judicial power, under the Constitution, to hear and determine a cause between a State and a citizen of another State, and, second, whether that sovereign ever conferred that judicial power upon the courts of the State.

"The sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State Judge or a State court as if the line of division was traced by landmarks and monuments visible to the eye."

Chief Justice Taney in Ableman *vs.* Booth, 21 How., 516.

That a corporation is, for jurisdictional purposes, a citizen of the State under whose laws it is incorporated is firmly established by numerous decisions of the Supreme Court.

Ex parte Shaw, 145 U. S., 444.

Wisconsin *vs.* Pelican Ins. Co., 127 U. S., 265.

II.

THE JUDICIAL POWER OF THE UNITED STATES.

The Constitution of the United States provides as follows:

ARTICLE III.

SECTION 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall at stated

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times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. (1) The judicial power *shall extend* to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—*between a State and citizens of another State;*—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

(2) In all cases affecting ambassadors, other public ministers and consuls, and *those in which a State shall be party*, the Supreme Court shall have *original jurisdiction*. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

And this Court has held, speaking by Justice Story, that *all* the judicial power granted to the United States by the Constitution must be vested in some court by Congress.

"The judicial power must, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might at their pleasure be omitted or declined, is to suppose that under the sanction of the Constitution they might defeat the Constitution itself. A construction which would lead to such a result cannot be sound.

"The same expression, 'shall be vested,' occurs in other parts of the Constitution in defining the powers of the other co-ordinate branches of the Government. The first article declares that 'all legislative powers herein granted shall be vested in a Congress of the United States.' Will it be contended that the legislative power is not absolutely vested? That the words merely refer to some future act and mean only that the legislative power may hereafter be vested? The second article declares that 'the executive power shall be vested in a President of the United States of America.'

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Could Congress vest it in any other person, or is it to await their good pleasure whether it is to vest at all? It is apparent that such a construction, in either case, would be utterly inadmissible. Why, then, is it entitled to a better support in reference to the judicial department?

"If, then, it is the duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise this anomaly would exist—that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the Constitution and thereby defeat the jurisdiction as to all, for the Constitution has not singled out any class on which Congress is bound to act in preference to others."

Martin *vs.* Hunter's Lessee, 1 Wheaton, 329, 330.

"For the reasons which have been already stated we are of opinion that the words are used in an imperative sense. They import an absolute grant of judicial power." * * *

Martin *vs.* Hunter's Lessee, 1 Wheaton, 331.

"Before the adoption of the Constitution each State had complete and exclusive authority to administer by its courts all the law, civil and criminal, which existed within its borders. Its judicial power extended over every legal question that could arise; but when the Constitution was adopted a portion of that judicial power became vested in the new government created, and so far as thus vested it was *withdrawn from the sovereignty of the State.* Now the execution and enforcement of the laws of the United States and the judicial determination of questions arising under them are confided to another sovereign, and to that extent the sovereignty of the State is restricted."

Tennessee *vs.* Davis, 100 U. S., 257.

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III.

WHERE THE POWER MUST BE EXERCISED.

We claim that the entire judicial power surrendered to the United States by the several States, for the common good of all the States, vested absolutely and completely in the United States under the Constitution. By that instrument the States surrendered to the new Nation certain portions of the judicial power naturally inherent in a sovereignty, and thereafter those portions of such judicial power were as completely withdrawn from the States as if they had never existed in the States. The State courts thereafter had no more right or jurisdiction to take cognizance of a case embraced in such cession of judicial power than if they never had possessed such right. So far as the State courts were concerned, it was as if judicial power over the subjects and parties specified had never existed anywhere.

The Constitution intrusts to Congress the duty of *distributing* the judicial power of the United States, so far as it is not distributed by the Constitution itself, but Congress can confer such power only where the Constitution expressly allows it to be conferred. Congress can make no distribution which would, either by express terms or by necessary effect or by possible effect, remove from the Federal judiciary any portion of the judicial power granted to the United States by the Constitution.

Certain attributes of sovereignty were delegated by the several States to the new Nation to be exercised for the benefit of the States themselves. Among these benefits which the States contracted for was the trial of controversies between their own citizens and other States in the courts of the Nation and not in the courts of those other States. The new Nation, having received this delegation of power, must exercise it only in accordance with the terms by which it

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was granted. It cannot in turn grant that power to another without express authority to do so. *Delegatus non potest delegare.* It cannot even give back to the States the power received from them except in the manner prescribed by the Constitution—*i. e.*, by amendment of the Constitution.

Such an amendment was adopted regarding the very power now under consideration. By the eleventh amendment to the Constitution it is provided that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State." By this amendment the Nation ceded back to the States one-half of the judicial power acquired by the Nation under the Constitution in "controversies between a State and citizens of another State." Thereupon the States were reinvested with their original inherent right as sovereigns to take cognizance in their own courts of such controversies, where (if the State permits herself to be sued) the State is the defendant. But in all such controversies where the State is the plaintiff the judicial power remained unimpaired in the courts of the Nation.

We do not deny that the judicial power vested in the United States by the Constitution might be delegated if the Constitution had so provided, or that it may be exercised in any manner for which authority can be found in the letter and spirit of the Constitution, but we insist that it can be exercised only in such manner and not in a manner subversive of the letter or spirit of the compact and destructive of the object it was designed to attain.

The Constitution provides that the judicial power granted "shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." It is evident that those "inferior courts" cannot by any possibility be held to include State courts, for the State courts are neither "ordained" nor "established" by

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Congress. Furthermore, the same section contains provisions as to the compensation and tenure of office of the judges of those "inferior courts" which clearly are not applicable to State courts, for Congress has no control over those subjects in the States. It is also clear that Congress has no authority to confer upon a State court any judicial power which the Constitution declares *shall vest* in the Federal courts. Any attempt on the part of Congress to do so would be unconstitutional and void and no jurisdiction would be acquired by any State court thereby.

IV.

NATURE OF THE CONCURRENT JURISDICTION EXERCISED BY THE STATE COURTS.

It appears from the foregoing analysis of the transfer of judicial power from the States to the Nation that the judicial power of the United States vests *exclusively* in the courts of the Nation; that Congress cannot vest such power in any tribunal not authorized by the Constitution; and that no court can take cognizance, for any purpose, of a cause embraced within the constitutional grant of judicial power unless authorized to do so, either by the Constitution itself or by Congress acting under the Constitution.

It may appear, at first sight, that the principle stated above is in conflict with the judicial history of the country, for State courts are constantly taking cognizance of causes of the character enumerated in the constitutional grant of judicial power to the United States.

The question therefore arises,—Do the State courts, in rightfully taking jurisdiction and giving judgment in a case of the class to which the judicial power of the United States extends, exercise the *judicial power* of the United States? Obviously not, for Congress has no authority to vest that

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judicial power except in courts "ordained and established" by itself. The judicial power of the State (where not exclusively granted to the Nation) has remained unimpaired in the courts of the State except that, as to certain classes of cases, jurisdiction to hear and determine the controversy has been made subject to supervision by the courts of the Nation. Where Congress at the same time provides the means for such supervision, either by removal or appeal, so that the judicial power of the United States shall, as provided by the Constitution, "*extend*" to the controversies, it is competent for Congress to permit the State courts to resume the exercise of their suspended jurisdiction.

But we maintain, as a constitutional principle absolutely necessary to carry out the spirit and letter of the Constitution, that Congress has no right to vest concurrent jurisdiction in the courts of the States without providing means by which the judicial power of the United States "shall extend" to those cases so provided for in the Constitution. Such a jurisdiction becomes not concurrent in the State courts, but *exclusive*. Congress is authorized by the Constitution to "constitute tribunals inferior to the Supreme Court," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof" (article I, sec. 8, paragraphs 9 and 18). Congress has no power, by action or inaction, to nullify the Constitution in any particular. Congress may regulate the *manner* of exercising the judicial power of the United States, but it cannot abdicate such power.

We maintain that wherever the courts of the several States now rightfully exercise jurisdiction in any case embraced in the original grant of judicial power to the new Nation, they do so merely by virtue of a license to do so given by that Nation and not by virtue of any inherent power vested in the States themselves by right of sovereignty. It makes no

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difference that the States had originally possessed exclusively such judicial power by right of sovereignty. They had intrusted its control to a higher sovereignty by the most solemn and important political compact known to history—a compact which is still in full force and vigor.

If State courts now rightfully exercise such jurisdiction, therefore, it is evident that they cannot do so in any class of cases except where express authority from the United States appears, by a statute which is not repugnant to the letter or spirit of the Constitution. Their *judicial power* is derived from the sovereignty of their own State, but the right to exercise it, in any of the classes of cases included in the constitutional grant of judicial power to the United States, is a privilege granted by the sovereignty of the Nation. And in no case (unless the Constitution is to be nullified) can a State court take cognizance of any such case where statutory provision is not made whereby the case can be removed or appealed by the defendant to some Federal court for examination of the *merits* of the cause. The State courts take cognizance of such cases, not merely because those cases involve questions of general law properly cognizable in their own courts, but because the Nation authorizes them to do so, under such restrictions and regulations as shall preserve intact in the Nation the judicial power granted to it by the Constitution. It is within the undoubted power of Congress at any time to repeal a law by which the courts of the States are given concurrent jurisdiction in cases to which the judicial power of the United States extends, and we claim that thereafter the State courts could not exercise such jurisdiction.

"The principles established in a former paper teach us that the States will retain all pre-existing authorities which may not be exclusively delegated to the Federal head; and that this exclusive delegation can only exist in one of three cases: where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is

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granted to the Union, and the exercise of a like authority is prohibited to the States; or *where an authority is granted to the Union, with which a similar authority in the States would be utterly incompatible.* Though these principles may not apply with the same force to the judiciary as to the legislative power, yet I am inclined to think that they are, in the main, just with respect to the former, as well as the latter. And under this impression, I shall lay it down as a rule, that the State courts will retain the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes.

* * * * * * *

"But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes of which the State courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be *peculiar* to, the Constitution to be established; for not to allow the State courts a right of jurisdiction in such cases, can hardly be considered as the abridgment of a pre-existing authority.

* * * * * * *

"Either this must be the case," [appeal to the Federal courts] "or the local courts must be excluded from a concurrent jurisdiction in matters of national concern, *else the judiciary authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor.* Neither of these consequences ought, without evident necessity, to be involved.

* * * * * * *

"The evident aim of the plan of the convention is, that all the causes of the specified classes shall, for weighty public reasons, *receive their original or final determination in the courts of the Union.*"

The Federalist (Hamilton), No. 82.

It may be suggested, in opposition to the principle we are asserting, that there are still many cases of the classes embraced in the grant of judicial power (*e. g.*, controversies between citizens of different States) which are tried in the State courts, without the power of removal to the Federal courts, because the amount involved is below the jurisdictional amount of the Federal courts. The answer to that is—*de minimis lex non curat.* If "*minimis*" be regarded as a

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word hardly applicable to the present jurisdictional amount of the United States circuit courts, the answer is that Congress has established it as such, and until this Court shall declare that an amount so fixed by Congress is unreasonable (as would undoubtedly be the case were the amount ten times as great) the legislative definition of "*minimis*" must control.

The very fixing of a minimum amount for jurisdiction implies the assertion that suits involving a less amount are not of sufficient importance to invoke the Federal judicial power. Whatever view we may entertain regarding the power of Congress to limit, by a money value, except of the most trifling sum, the causes of Federal cognizance, its right to do so within reasonable limits, as a matter of public policy, is now too firmly established to be controverted. In Pollock *vs.* Farmers' Loan and Trust Company it was earnestly contended that an exemption from taxation of incomes below four thousand dollars was not so unreasonably high as to infringe the constitutional provision requiring uniformity of taxation.

157 U. S., 429.

The grant of judicial power is in different terms and of different effect from the power to regulate commerce granted by article I, section 8.

"Congress shall have power to regulate commerce" is a permission which may or may not be exercised, according to the will of Congress. But a provision that "the judicial power shall extend" to certain classes of cases is mandatory and not to be avoided.

The States, having given to the United States the power to regulate commerce, may still make regulations on that subject which do not interfere with the national welfare, until the United States, exercising the granted power, put an end to the power of the States.

Cooley *vs.* Board of Wardens, 12 How., 299.

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Not so with that portion of the judicial power formerly inherent in the States which was transferred to the United States by the Constitution. Such power is wholly gone out of the States and can no longer be exercised by the courts of the States, but only by the courts of the United States for the benefit of all the States.

Under the commerce clause of the Constitution, it now lies exclusively within the will of the Congress of the United States to act or abstain from acting under that clause. Not so with the Federal courts under the Constitution. They do not act *sua sponte*. They cannot exercise a single judicial function of their own motion, but only when moved to action by the action of a suitor in demanding relief at their hands. But when their action is invoked by a suitor, not only does the full judicial power exist in the courts but also the obligation to exercise it.

It is obvious therefore that there is a very marked and essential difference between the "power to regulate commerce" granted by the states to the United States and the "judicial power" granted by the same instrument but in studiously different language. One may be exercised or not at the will of the United States. The other must be exercised whenever invoked. One leaves in the states power to act until restrained by the superior action of the United States. The other vests immediately and absolutely in the United States all judicial power in the certain classes of cases enumerated. One might never be exercised by the United States, a situation easily conceived, and the Nation would still exist. The power would lie in the states for their wise exercise. The other must be exercised by the United States or the Nation goes to pieces. Conceive it to be possible for the United States to establish no courts and to appoint no judges. The judicial power granted by the Constitution could not, even in that event, be exercised by the states. Federal anarchy might result, but not any lawful exercise of that judicial power by State courts.

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But the power of the states to regulate commerce has its limitations, even before Congress acts.

Where the subject-matter requires a uniform system as between the states, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the states.

Leisy *vs.* Hardin, 135 U. S., 100.

Certainly the "subject-matter" embraced in the grant of judicial power, by language stronger than in the commerce clause, requires a "uniform system between the states" and so "cannot be encroached upon by the states." And especially is this so when the particular case involved is a controversy between a state and a citizen of another state, a case which each state has contracted should be tried in the courts of the United States and has thereupon and in consideration thereof relinquished the right to make war upon the other states in redress of wrongs done its citizens.

V.

NO CONCURRENT JURISDICTION IN CASES BETWEEN A STATE AND A CITIZEN OF ANOTHER STATE.

Congress has never directly conferred or attempted to confer upon the courts of the *States* concurrent jurisdiction of controversies between a State and citizens of another State. The only provision of law that may be construed in that way is found in section 13 of the judiciary act of 1789 and section 711 of the Revised Statutes. Said section 13 reads as follows:

"That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens,

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in which latter case it shall have original but not exclusive jurisdiction." * * *

1 Statutes U. S., 80.

It will be observed that the above law does not mention any court which shall exercise jurisdiction concurrent with that of the Supreme Court. So far as the terms of the act are concerned such concurrent jurisdiction may be exercised by any court, State or Federal, which, under the Constitution, or laws of Congress warranted by the Constitution, could take cognizance of the cause. The que-tion is whether Congress has any constitutional authority to pass an act which, if carried into execution, must necessarily remove from the consideration and determination of all courts of the United States cases to which by the Constitution the judicial power of the United States extends, and whether Congress has done so.

Section 711 provides as follows:

"SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States. * * *

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens."

Upon a careful reading of these provisions it is seen that the act of 1789 neither by direct words nor by implication confers jurisdiction upon any State court over any case between a State and citizens of another State. The language of that act is perfectly consistent with the idea that a portion of this original jurisdiction of the Supreme Court was to be exercised concurrently with some inferior court of the United States then or thereafter to be established. Such concurrent jurisdiction was by section 9 of the same act conferred upon the district courts of the United States, *exclusively* of the courts of the several States, in all suits

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against consuls, a class of cases which is also within the original jurisdiction of the Supreme Court under section 2 of article III of the Constitution.

But section 711 of the revision apparently goes a step further, and although it does not in terms grant to the State courts jurisdiction concurrent with the Supreme Court in cases between a State and citizens of another State, yet it does seem to do so by implication. It is possible (and we ought, out of respect to the revisers and to Congress, to say *probable*) that this apparent grant of jurisdiction to the State courts by implication was an oversight arising from the attempt to tabulate in one section provisions of law that had been enacted in a different manner. The revisers certainly overlooked the fact that by no law was the correlative and essential power of removal of such cases from the State courts provided for. It is impossible that Congress could have intended by the enactment of a revision of the laws to violate the Constitution. It is not necessary, therefore, to argue that either the judiciary act of 1789 or the revision of 1874 was unconstitutional, for they contain no express unconstitutional grant of jurisdiction. It is only necessary for us to argue against such a *construction* of those acts as would make them unconstitutional.

Conceding that the jurisdiction of the Supreme Court in cases in which a State is a party, while original, is not exclusive, it certainly lies as much within the power of Congress to confer jurisdiction in those cases upon an inferior court of the United States as upon a court of a State. If the States will consent to submit their controversies to an inferior court of the United States and if there is nothing in the letter or spirit of the Constitution to the contrary, Congress may confer concurrent jurisdiction in cases where a State is a party upon the circuit or district courts of the United States, as it did in case of consuls.

But a violation of the spirit of the Constitution, and, indeed, of its letter, is found in any attempt on the part of

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Congress to confer *exclusive* jurisdiction upon the courts of the States in cases where a State is a party. It is evident that an act of Congress must be regarded not only in its language, but in its effect, in order to ascertain whether or not it does so confer exclusive jurisdiction upon the courts of the States. Conceding for the moment what we do not admit, the right of Congress to confer concurrent jurisdiction upon a State court in a case in which the Constitution itself vests original jurisdiction in the Supreme Court, because the *parties* are a State and a citizen of another State, it is evident that Congress in so doing must provide means by which the defendant may invoke the judicial power of the United States and obtain the judgment of the courts of the United States upon the merits of the controversy, whether or not they involve a Federal question. But neither the judiciary act of 1789 nor any subsequent act provides for the removal into the courts of the United States of causes between a State and citizens of another State, which involve no Federal question, although such acts do provide for removal in the other cases where the States are allowed to exercise concurrent jurisdiction in controversies to which the judicial power of the United States extends.

If no court of the United States except the Supreme Court has, under the Constitution and laws, jurisdiction to consider the case, then the right of the defendant to remove the case into the Supreme Court must be secured by appropriate legislation, for it is evident that unless this right of removal exists the jurisdiction of the State court is made *exclusive* of the courts of the United States, and that the judicial power of the United States no longer extends to certain cases to which the Constitution declares it *shall* extend. An act which should purport to do so would be unconstitutional.

But if Congress has no power to confer upon a State court exclusive jurisdiction of such a case it is also true that Congress cannot grant to another the right to make such juris-

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diction exclusive. Congress cannot put it into the power of either party to the cause to make the jurisdiction of the State court exclusive, whether that party be a State or an individual.

If Congress can give the State a right to sue a citizen of another State in her own courts and does not provide the means by which that citizen can remove the cause into the only United States court having jurisdiction, then Congress bestows upon the plaintiff in that suit the right, at her option, to make the jurisdiction of the State court exclusive of the courts of the United States. The State has an undoubted right to sue a citizen of another State in the Supreme Court of the United States. That a citizen of another State had originally the same right to sue a State in that Court was conclusively established in Chisholm *vs.* Georgia. The right of the citizen was taken away by the eleventh amendment to the Constitution. So that if the right of Congress to confer concurrent jurisdiction upon the State court in a suit by that State against a citizen of another State without at the same time providing means by which the citizen may remove the cause into a Federal Court be admitted, it follows that we must look to the caprice or self-interest of the plaintiff and to her option based thereon, and not to the Constitution of the United States, in order to ascertain whether jurisdiction in that case be vested in the courts of the State to the exclusion of the courts of the Nation. Can it be doubted how that option will invariably be exercised or that it will result in depriving the Supreme Court of jurisdiction over this class of cases, a jurisdiction which may at any moment become of vital importance to a State or to the Nation?

"We must presume that Congress did not mean to exclude from our jurisdiction those controversies the decision of which the States had confided to the judicial power and are bound to give to the Constitution and laws such a meaning as will make them harmonize."

Rhode Island *vs.* Massachusetts, 12 Peters, 723.

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The existence of the eleventh amendment itself sufficiently negatives the idea that a State may sue a citizen of another State in her own courts, without the possibility of removal or appeal on the merits by the defendant. Had it not been intended that such controversies should be immediately or ultimately determined by the Federal courts, the entire clause would have been repealed, not half of it.

VI.

REASON FOR THE CONSTITUTIONAL PROVISION.

But whether the State courts, in cases to which the judicial power of the United States extends, take jurisdiction by virtue of the sovereignty which created them, subject to be divested of such power by Congress, or whether they act only by virtue of powers expressly conferred upon them by Congress, there remain some limitations inherent in the Constitution itself upon the power of the State courts to act and upon the power of Congress to authorize them to act. Congress has no more power to violate the spirit than the letter of the Constitution, and neither Congress nor the courts of the States have any right, by conferring or exercising judicial authority, to remove from that instrument any protection or guarantee which it affords to the contracting parties—*i. e.*, the several States to whom it owes its existence, or to their citizens.

The books are full of the reasons why jurisdiction to decide controversies between States and citizens of other States was conferred by the Constitution upon the courts of the Nation.

"It is ordained that the judicial power of the United States shall extend to ten descriptions of cases, namely: * * *

"8. To controversies between a State and citizens of another State, because, in case a State (that is, all the citizens of it)

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has demands against some citizens of another State, it is better that she should prosecute their demands in a national court than in a court of the State to which those citizens belong, the danger of irritation and criminations arising from apprehensions and suspicions of partiality being thereby obviated; because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid that the latter should be the sole judges of the justice due to the latter, and true republican government requires that free and equal citizens should have free, fair, and equal justice."

Chisholm *vs.* Georgia, 2 Dallas, 475.
Martin *vs.* Hunter's Lessee, 1 Wheaton, 323.

"It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: * * * 4th, to all those which involve the peace of the Confederacy; whether they relate to the intercourse between the United States and foreign nations, or to that between the States themselves; * * * and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased.

* * * * * *

The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the Federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned.

* * * * * *

The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior

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to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century; and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body. * * * Whatever practices may have a tendency to distract the harmony of the States are proper objects of Federal superintendence and control.

It may be esteemed the basis of the Union, that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.' And if it be a just principle that every government *ought to possess the means of executing its own provisions by its own authority*, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, *the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens.* To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

* * * * * * *

The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the Federal courts as the proper tribunals for the determination of controversies between different States and their citizens."

The Federalist (Hamilton) No. 80.

"The State tribunals could not be expected to afford that degree of impartiality which the circumstances of these several cases required."

Curtis' Constitutional History of United States, edition 1889, vol. 1, 599.

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It was the very object of the framers of the Constitution in providing a national tribunal for the trial of controversies between a State and citizens of another State to protect those citizens. Indeed, the States, under the order of things existing before the adoption of the Constitution, did not need protection. They sued those citizens in their own courts and certainly could not complain if justice were not done therein. The chief object of this provision of the Constitution was to protect one citizen of a State against injustice at the hands of the whole body of citizens of another State. So firmly was this idea imbedded in the minds of those who adopted the Constitution that when, shortly afterward, a citizen sued the State of Georgia it was vehemently contended before the Supreme Court and by protest and memorial of States that the Constitution was not intended to embrace a case where the State was the defendant, but only where it was plaintiff. (Chisholm *vs.* Georgia, 2 Dallas, 419.)

"Its jurisdiction in controversies between a State and citizens of another State is much objected to, and perhaps without reason. It is not in the power of individuals to call any State into court. The only operation it can have, is that, if a State should wish to bring a suit against a citizen, *it must be brought before the Federal court.* This will give satisfaction to individuals, as it will prevent citizens, on whom a State may have a claim, being dissatisfied with the State courts. It is a case which cannot often happen, and if it should be found improper it will be altered."

Madison, in Virginia Convention. Elliot's Debates, vol. 3, page 533.

And shortly following the judgment of the Supreme Court that its jurisdiction extended to cases where a State was the defendant, the people of the United States, by a constitutional amendment, enforced their view of what the Federal compact ought to have been and took away from the national courts jurisdiction in cases where a State was defendant. But even in adopting that amendment the people were

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careful to preserve the constitutional right of a citizen of each State not to be sued by another State in the courts of that other State.

"It is settled law, as established by well-considered decisions of this Court, pronounced upon full argument and after mature deliberation, notably in *Cohens vs. Virginia*, 6 Wheat., 264; *Osborn vs. B'k*, 9 Wheat., 738; *Mayor vs. Cooper*, 6 Wall., 247; *Gold Washing & W. Co. vs. Keyes*, 96 U. S., 199 and *Tennessee vs. Davis*, 100 U. S., 257"—

"That while the 11th amendment of the National Constitution excludes the judicial power of the United States from suits in law or equity commenced or prosecuted against one of the United States by citizens of another State, *such power is extended by the Constitution to suits commenced or prosecuted by a State against an individual*, in which the latter demands nothing from the former but only seeks the protection of the Constitution and laws of the United States against the claim or demand of the State."

"That a case in law or equity *consists of the right of one party as well as of the other*, and may properly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either."

"These propositions, now too firmly established to admit of or to require further discussion, embrace the present case and show that whether we look to the Federal question raised by the State in its original petition or to the Federal question raised by the company in its answer, the inferior State court erred as well in not accepting the petition and bond for the removal of the suit to the circuit court of the United States as in thereafter proceeding to hear the cause. It was entirely without jurisdiction to proceed after the presentation of the petition and bond for removal."

Railroad Company *vs.* Mississippi, 102 U. S., 135.

"There is an additional consideration which is entitled to great weight. The Constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties who might

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be plaintiffs and would elect the national forum, but also for protection of defendants who might be entitled to try their rights or assert their privileges before the same forum. *Yet if the construction contended for be correct, it will follow that as the plaintiff may always elect the State court the defendant may be deprived of all the security which the Constitution intended in aid of his rights. Such a state of things can in no respect be considered as giving equal rights.*" * * *

Martin *vs.* Hunter's Lessee, 1 Wheaton, 348.

So eminent a jurist as Justice Story has declared in Martin *vs.* Hunter's Lessee that "there is certainly *vast weight* in the argument which has been urged that the Constitution is imperative upon Congress to vest *all* the judicial power of the United States in the shape of original jurisdiction in the supreme and inferior courts created under its own authority." But we now merely seek to preserve a jurisdiction already vested by the Constitution itself.

Our contention, so far from being an attack upon the rights of the States, is in reality a defense of those rights. The States, being originally sovereigns, had the full power of sovereigns to protect their citizens against injustice or oppression by any other nation or State. If a citizen of a State failed to meet with justice at the hands of another State or foreign power, his sovereign could assert his rights either by negotiation, by arbitration, or in the last resort, by war. But by the adoption of the Constitution each State relinquished as against each other State the sovereign power of so protecting its own citizens.

"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Constitution, Article I, Section 10 (3).

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It must be evident that the States surrendered their sovereign character so far as to submit themselves and their citizens to the arbitrament of a tribunal not created by themselves only for very good reasons. It is also evident that Congress can do nothing to impair the value to the several States or their citizens of such surrender of sovereign power or take any action which tends to impair the rights which the States or their citizens thereby acquired.

VII.

EFFECT OF THE SUIT BY THE STATE.

The State of Louisiana sued the Plaquemines Tropical Fruit Company of New Jersey on January 25, 1892, in a court established and maintained by herself, thus being in effect both party and judge. The State appeared merely as a claimant of lands claimed by the company and not in the assertion of her sovereignty and the suit was not, therefore, within the sanction of the rule in Wisconsin *vs.* Pelican Ins. Co. (127 U. S., 265). It was, on the contrary, precisely the kind of a suit which the fathers determined and the Constitution declares shall be decided by Federal tribunals.

The defendants pleaded their foreign domicile as a bar to the jurisdiction of the court (Record, page 20; printed Record, 13) but the plea was overruled. There was then no escape from a trial of the merits in the State courts, for there was no Federal question involved in the suit, by which it could have been been taken on the merits of the case to the Supreme Court of the United States.

1 Statutes U. S., 85 (section 25).

Rev. Stats. U. S., 709.

Act of February 18, 1875, 18 Stats. U. S., 318.

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Neither could the suit be removed so that its merits might be tried in the circuit court of the United States, for although the judiciary act provides for the removal of suits between citizens of different States it contains no provision for the removal of a suit between a State and a citizen of another State. Nor does the revision of the statutes.

1 Statutes U. S., 79 (section 12).
Rev. Stats. U. S., section 639.
Act of March 3, 1875, 18 Stats. U. S., 470.
Act of March 3, 1887, 27 Stats. U. S., 552.
Act of August 13, 1888, 25 Stats. U. S., 434.

Thus all the evils which the Constitution was designed to avoid are encountered. We submit that it is impossible that the State courts should have possessed a jurisdiction so subversive of the spirit and the letter of the Constitution. We claim, therefore, that the State courts of Louisiana had no jurisdiction in this controversy because, first, they never received an express grant of jurisdiction from the United States; and, second, that such a grant, if actually made, conferring absolute jurisdiction, uncontrolled by Federal revision, in cases between a State and citizens of other States is contrary to the Constitution and therefore void.

It is no doubt true that this result, arising from the nonaction of Congress, was not intended. But Congress can no more set aside the Constitution unintentionally than it can by premeditated intent. If Congress cannot take away from the judicial power of the United States by positive enactment, it cannot do so by mere lapse or omission.

It follows that the proceedings of the courts of the State of Louisiana, having by the fundamental law of the land no jurisdiction to determine controversies between that State and the citizens of other States, are absolutely void, and the judgment of no effect. We claim that the State of Louisiana, although she has not chosen to appear voluntarily in

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a Federal Court, must do so or cease to assert her demand against the complainant herein.

The case of Ames *vs.* Kansas (111 U. S., 449), upon which the defendant relied below did not, as we read it, decide anything contrary to the principle herein contended for. The contention there was that the jurisdiction of the Supreme Court was both original and exclusive, and the case arose upon the refusal of the circuit court to entertain the controversy when removed from the State court of Kansas. The decision was that the circuit court of the United States should entertain the cases upon removal, inasmuch as they involved a Federal question, the Supreme Court deciding that the original jurisdiction of the Supreme Court "was made concurrent with *any other court to which jurisdiction might be given* in suits between a State and citizens of other States or aliens." It was not decided that the State courts had such concurrent jurisdiction, but that the inferior courts of the United States possessed it, which is in no way contrary to our position. The court quoted approvingly from the decision of Chief Justice Taney on the circuit in Gittings *vs.* Crawford (Taney, page 1), as follows:

"In the clause in question there is nothing but mere affirmative words of grant and none that import a design to exclude the subordinate jurisdiction of *other courts of the United States* on the same subject-matter."

111 U. S., 468.

Nor is the recent decision of this Court in Postal Telegraph Cable Co. *vs.* State of Alabama (155 U. S., 482), relied upon below, in conflict with our position. In that case this Court decided that the circuit court of the United States had no jurisdiction because "the suit was one brought by the State to recover taxes and penalties imposed by its own revenue laws," and therefore not cognizable in the circuit court, under the decision in Wisconsin *vs.* Pelican Insurance Co. (127 U. S., 265).

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Nor is the recent decision of this Court in case of California *vs.* Southern Pacific Company (157 U. S., 229) opposed to the principle for which we contend. In that case the State of California sued the corporation by original bill in the Supreme Court of the United States. But the Court dismissed the bill on the ground that in addition to the corporation citizen of another State, there were other necessary parties defendant who were citizens of the plaintiff State, and held that suits between a State and its own citizens are not included within the jurisdiction of the Court granted by the Constitution. This was a mere reassertion of the principle previously established in suits between citizens of different States. The partiality or unfairness of State courts may well be supposed not to exist against her own citizens, and therefore not against citizens of other States joined with such defendants, and the reason for the Federal jurisdiction may well be held not to exist.

Gittings *vs.* Crawford (Taney, page 1), referred to above, merely decided that the original jurisdiction of the Supreme Court was not exclusive of that of the *circuit courts of the United States*, a ruling which is entirely within the principle which we are asserting.

The case of Börs *vs.* Preston, 111 U. S., 252, also relied upon below, is not at all in point. The only question decided was whether or not a consul of a foreign government was properly sued in the circuit court of the United States instead of in the district court of the United States. The only resemblance even remote to this case is that by the Constitution the Supreme Court is given original jurisdiction in cases affecting the consuls and those in which a State shall be a party. But Congress has in the former case given concurrent jurisdiction not to *State courts*, but to inferior courts of the United States. This is perfectly compatible with our position, which we state again in order to avoid any possible risk of being misunderstood.

We do not contend that a citizen, when sued by a State,

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is guaranteed by the Constitution of the United States the trial of that case in the *Supreme Court* of the United States. We do claim that he is guaranteed by the Constitution a trial in *some* court of the United States. If Congress has granted original jurisdiction in that class of cases to any inferior court of the United States, a trial in that court would be all that another State could demand for her citizens, or the citizens for themselves. It would be a complete fulfillment of the constitutional guarantee. If, however, Congress has not granted jurisdiction to any inferior Federal court, it follows that, until Congress does so act, the States are guaranteed a trial for their citizens in the *only* Federal court which does have jurisdiction, and that is the Supreme Court. The essence of our contention is, however, not a trial in this Court, but a trial in some one of the Federal courts.

It has been suggested to us that "it cannot be seriously contended that a State cannot sue a citizen of another State for even a small sum in any other court than the United States Supreme Court, and yet that is the logical consequence of the position assumed."

But we do contend very seriously for just that principle, except where the State sues for penalties or otherwise in the exercise of her sovereign powers and not as an ordinary litigant. It is extremely unlikely that the time and attention of the Supreme Court will be taken up by suits of States against citizens of other States regarding trivial matters, for the States do not bring many civil suits, and in any event would resort to that tribunal only in cases of great importance. It is not to be presumed that the States would put themselves to the great inconvenience and expense which would necessarily attend the bringing of suit in that Court merely for the purpose of endeavoring to carry into an absurd extreme a great constitutional principle and safeguard. Nor is it to be presumed that citizens will be controlled by different considerations than those influencing States.

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But it is not to be doubted that if the Supreme Court should be embarrassed by the presence on its docket of a large number of suits by States against citizens of other States prompt relief would be found in congressional action. This Court has always found a willing disposition in Congress to afford such relief whenever necessary, and all that would be necessary for Congress to do would be to provide by a simple enactment of a few lines that the jurisdiction of the courts of the States shall be concurrent with that of the Supreme Court in cases where a State shall sue a citizen of another State and at the same time provide for the removal of the cause into that Court by the citizen (or by either party) under proper regulations.

We are confident that there would be no abuse of that right. Such legislation would give to State courts the jurisdiction in such controversies which they do not now possess. The citizen would have to decide before trial whether the condition of the State courts is such as to make it imperative upon him, in order to secure justice, to remove his cause into the Supreme Court. Unless the necessity is great he will be deterred by considerations of expense and inconvenience arising from distance from the Court and the manner of presenting his case there. But where the courts of the State are in such a condition, from whatever reason, as to overcome all these considerations, then there is, from that very fact, no provision of the Constitution that should be more jealously guarded than the one which we are endeavoring to maintain.

"The chief difficulty of the condition of affairs existing before the Constitution lay not so much in the hazards of a violation of a principle through local prejudice, or the superior force of local policy or legislation—although these influences were always powerful—as in the fact that, when these influences were likely to be most active, or were most feared, there was no tribunal to which resort could be had, and which was known to be beyond their operation and their reach. The articles of compact between the States had

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intended to remove from the citizens of the different States the disabilities of practical alienage under which they would have stood in the tribunals of each other. But with that mere declaration those articles stopped. If the litigant saw that the local law was likely to be administered to him as if he were a foreigner or feared that the scales of justice would not be held with an impartial hand, *he could go nowhere else for a decision.* This was a great evil; for much of the value of every judicature depends upon the confidence it inspires."

Curtis, Constitution History of United States, vol. 1, 598, edition of 1889.

Congress might also afford more effectual relief by providing that the States may sue citizens of other States in the inferor courts of the United States, exercising concurrent jurisdiction with the Supreme Court in that class of cases, and may provide for the removal of such cases from the State courts to such inferior United States courts. The power of Congress to do this is unquestioned, for Congress has already given to such inferior courts concurrent jurisdiction in certain cases where the Supreme Court has original jurisdiction. It cannot be doubted that, after the passage of such an act, a State having occasion to sue a citizen of another State would bring that suit in the United States court situated within her own boundaries in all cases except those of great importance. The State would exercise the option whether to sue in the Supreme Court or in the inferior court of the United States, and we apprehend that dignity would yield to more practical considerations except in cases where the dignity of the State might be substantially involved.

Furthermore, the removal of the cause by the citizen might be limited to removal into an inferior court of the United States. Of this neither he nor his State could complain, for although the Constitution guarantees the right to have the controversy with another State tried in a *Federal* court it does not guarantee the right of trial in the *Supreme* court. But if the bringing of a State into an inferior court of the

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United States be considered to be an infringement of the dignity of the State, we reply that a State could avoid such loss of dignity, if she deems the case of sufficient importance, by bringing the suit in the Supreme Court, since she alone would have the initiative and the option of two tribunals. Exercising the option of instituting the suit in her own courts, knowing that the statutes provide for the removal of such suit into an inferior court of the United States, would certainly leave the plaintiff State without ground of complaint.

It will be seen, therefore, that if our contention that a State cannot sue a citizen of another State in her own courts be sustained, whatever temporary inconvenience might possibly ensue would arise, not from the construction which the court gives to the Constitution, but from the failure of Congress to take the simple action necessary to afford relief. If found necessary it cannot be doubted that Congress will act.

But this discussion grows beyond the case. If a constitutional right exists it will be maintained by the Court, and the principle which governs is most admirably stated by Chief Justice Marshall as follows:

"It is most true that this Court will not take jurisdiction if it should not, but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty."

Cohens *vs.* Virginia, 6 Wheaton, 404.

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VIII.

THE PRESENT DEFECT IN STATE JURISDICTION ABSOLUTE.

The fact that the defendant Plaquemines Tropical Fruit Company is a citizen of the State of New Jersey clearly appeared in the record in the State court, as well as the fact that the plaintiff was the State of Louisiana, in the original petition filed by the plaintiff State and elsewhere. We maintain that, such fact being apparent on the face of the petition and record, the court acquired no jurisdiction, because the nature of the suit was not one confided to the judicial power of that court. Although the court was a court of general jurisdiction it could only act, in cases embraced within the grant of judicial power to the Federal Government, where permitted to do so by that Government.

We contend that the courts of the States are, so far as they exercise any jurisdiction which, under the Constitution, is lacking in the sovereignty that creates them, courts of special or limited jurisdiction. They are courts of general jurisdiction as to all matters within the power of the sovereignty creating them, but assuredly they are not courts of general jurisdiction as to matters arising outside of the territorial limits of that sovereignty or as to matters arising within the territorial limits of that sovereignty, but outside of the limits of the sovereign power. As to such cases, if they can by the comity of nations or sovereigns exercise any power at all, it is of a limited nature and extends only to what is expressly conferred by that other sovereignty. An example of this is found in the consular courts which are established in some semi-civilized nations, in which the character of the court, its personnel and procedure are established by some one or more civilized nations, but the *jurisdiction* of the court is limited to such parties and subject-matter as may be expressly authorized by the foreign sovereignty. Precisely analogous is the case where State courts exercise

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any part of the judicial power which inherently belongs from its very birth to the sovereign Nation established by the *people* of the United States. For all purposes the courts of the State when exercising such jurisdiction are courts of limited jurisdiction, and wherever they seek to take cognizance of either *parties* or *subject-matter* which by the fundamental law of the Constitution is inherent in the United States they are bound to make their jurisdiction appear.

"The proceedings of no court can be deemed valid further than its jurisdiction appears."

Turner *vs.* Bank of North America, 4 Dallas, 11.

"A court of general jurisdiction," says the supreme court of New Hampshire, "may have special and summary powers, wholly derived from statutes, not exercised according to the course of the common law and *which do not belong to it as a court of general jurisdiction.* In such cases its decisions must be regarded and treated like those of courts of limited and special jurisdiction. The jurisdiction in such cases, both as to the subject-matter of the judgment and *as to the persons to be affected by it,* must appear by the record, and everything will be presumed to be without the jurisdiction which does not distinctly appear to be within it." (Mores *vs.* Presby, 5 Fost., 302.) * * *

"But where the special powers conferred are exercised in a special manner, not according to the course of the common law, *or where the general powers of the court are exercised over a class not within its ordinary jurisdiction* upon the performance of prescribed conditions, no such presumption of jurisdiction will attend the judgment of the court. The facts essential to the exercise of the special jurisdiction must appear in such cases upon the record.

"The extent of the special jurisdiction and the conditions of its exercise over subjects or persons necessarily depend upon the terms in which the jurisdiction is granted, and not upon the rank of the court upon which it is conferred. Such jurisdiction is not, therefore, the less to be strictly pursued because the same court may possess over other subjects *or other persons* a more extended and general jurisdiction. Upon this subject the commentators on Smith's Leading Cases, after referring to numerous decisions holding that in

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such cases the record must show a compliance with the provisions of the statutes conferring the special jurisdiction, very justly observe that 'the inconveniences which may occasionally result from this course of decision are more than compensated by the lesson which it teaches that from whatever source power may come it will fail of effect when unaccompanied by right.'" (Vol. 1, p. 1012.)

Galpin *vs.* Page, 18 Wall., 350.
United States *vs.* Tarble, 13 Wall., 397.
Dred Scott *vs.* Sandford, 19 How., 691.
Williamson *vs.* Berry, 8 How., 542.

Only a very slight analysis is necessary to make it evident that the principle so clearly enunciated in the decision just cited is applicable to the present case. In that decision the jurisdiction of courts is shown to be limited by the *territorial* limits of the sovereignty under which they are constituted and from which they derive their authority. This is because as a principle of national jurisprudence, sovereignty is, as a rule, coextensive with territorial limits, and in the case then under discussion it was not necessary for the court to proceed further and consider the additional and vital principle peculiar to the jurisdiction of courts within the territorial limits of the United States. In every State of the Union two judicial systems exist, exercising jurisdiction within the same territorial limits. Both systems are limited in their jurisdiction, not only by the territorial limits within which such jurisdiction is exercised, but by the limits of power in the sovereign from which they derive their existence. Neither system can exercise jurisdiction beyond the limits of the power of the sovereignty under which it exists any more than it can beyond the geographical limits of the territory within which it is exercised; so that an attempt on the part of a State court to take jurisdiction, either of subject-matter or over parties rightfully within the jurisdiction of the other sovereignty, is without validity and is in effect extra-territorial.

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"It is argued, that the circuit court of the United States had no authority to question the jurisdiction of the county court of Woodford county; and that its proceedings were conclusive upon the matter, whether erroneous or not.

"We agree that if the county court had jurisdiction, its decision would be conclusive. But we cannot yield an assent to the proposition that the jurisdiction of the county court could not be questioned, when its proceedings were brought, collaterally, before the circuit court. We know nothing in the organization of the circuit courts of the Union which can contradistinguish them from other courts in this respect.

"Where a court has jurisdiction it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law as trespassers.

"This distinction runs through all the cases on the subject; and it proves that the jurisdiction of any court exercising authority over a subject may be inquired into in every court when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings."

Elliott *et al vs.* Peirsol's Lessee *et al.*, 1 Peters, 340.
Williamson *vs.* Berry, 8 Howard, 541–543.

Furthermore, if there was an absolute lack of jurisdiction in the State court, either on the ground that it had not been conferred or that it cannot under any circumstances be conferred, the jurisdiction in the State court was entirely wanting and need not be pleaded.

"An objection to jurisdiction on the ground of exemption from the *process* of the court in which the suit is brought, or the *manner* in which a defendant is brought into it, is waived by appearance and pleading to issue (10 Peters, 473: *Toland*

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vs. Sprague, 12 Peters, 300); but when the objection goes to the *power of the court over the parties* or the subject-matter, the defendant need not, for he cannot give the plaintiff a better writ or bill."

Rhode Island *vs.* Massachusetts, 12 Peters, 719.

A plaintiff may even assign for error the want of jurisdiction in that court to which he has chosen to resort.

Capron *vs.* Van Noorden, 2 Cranch, 126.

In the present case, because there was no statute of the United States authorizing appeal or removal to the Federal courts, the defendant citizen of New Jersey had no method of getting the decision of the merits of the controversy out of the State courts of Louisiana and into the Federal courts. Nothing that it could have done would have so shaped the case that the judicial power of the United States would "*extend*" to this case, to which the Constitution says it "shall extend." But the constitutional provision was not thereby destroyed. The only effect of the situation was that the State court acquired no jurisdiction.

Whether the defendant's plea to the jurisdiction was sufficient in its terms or whether it filed any plea whatever was therefore not material. Even the defendant's consent to the jurisdiction could not have conferred jurisdiction under circumstances so subversive of the compact between the States.

"There can be no failure of rights by laches in a case where consent would be altogether nugatory."

Cooley, Const. Limitations, 399.

"We have uniformly held that if a State court wrongfully refuses to give up its jurisdiction on a petition for removal and forces a party to trial he loses none of his rights by remaining and contesting the case on its merits. It is also a well-settled rule of decision in this Court that when a sufficient case for removal is made in the State court the rightful jurisdiction of that court comes to an end and no further

proceedings can properly be had there, unless in some form its jurisdiction is restored."

Baltimore & Ohio R. R. Co. *vs.* Koontz, 104 U. S., 5.
Insurance Co. *vs.* Dunn, 19 Wall., 214.
Removal Cases, 100 U. S., 457.
R. R. Co. *vs.* Miss., 102 U. S., 135.
Chesapeake & Ohio R. R. Co. *vs.* White, 111 U. S., 134.
Gordon *vs.* Longest, 16 Peters, 97.

This is the principle applied when the case in the State court is one between citizens of different States, and the germ of the principle is that as soon as, by proper petition, the jurisdictional fact appears on the record of the State courts, showing that the circuit court of the United States has jurisdiction, cognizance of the case is *eo instanti* removed from the State court and all proceedings in that court thereafter are null and void. As said in Insurance Co. *vs.* Dunn, "The further proceedings of the common pleas was a clear case of usurped jurisdiction. The illegality was gross. The action of the district and supreme courts of the State gave them no validity. The maxim that consent cannot give jurisdiction applied with full force." And, as said in Gordon *vs.* Longest, "Every step subsequently taken in the exercise of a jurisdiction in the case, whether in the same court or the court of appeals, was *coram non judice*." In the same case it is said, "One great object in the establishment of the courts of the United States and regulating their jurisdiction was to have a tribunal in each State, presumed to be free from local influence, and to which *all who were non-residents* or aliens might resort for legal redress. But this object would be defeated if a State judge, in the exercise of his discretion, may deny to the party entitled to it a removal of his cause."

16 Peters, 104.

The same "great object" was the reason why the Constitution entrusts the determination *of the merits* of suits by a

State against a citizen of another State to the Federal judiciary. Can it be contended that, because Congress has failed to carry this constitutional requirement into effect by providing for the removal of such a suit commenced in a State court into some court of the United States, the constitutional provision is thereby nullified and destroyed? We maintain, on the contrary, that, inasmuch as Congress has provided no means for such removal, it is impossible that any jurisdiction to hear a cause by a State against a citizen of another State was legally and constitutionally vested in the courts of that State. And we maintain that as soon as the essential jurisdictional fact—viz., that the suit is by a State against a citizen of another State—appears on the record of the State court its jurisdiction ceases *eo instanti* as fully and for the same reasons as stated in the cases cited above. Subsequent proceedings are *coram non judice* and absolutely null and void.

It follows that the Civil District Court for the Parish of Orleans and the Supreme Court of the State of Louisiana had no jurisdiction in the suit brought by the State of Louisiana against the Plaquemines Tropical Fruit Company, and that the judgment therein rendered is no bar to the suit by the latter against the grantees of the State.

DUANE E. FOX,
Of Counsel for Appellant.

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Reply Brf. of Fox & Gurley for Appt.

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Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 204.

PLAQUEMINES TROPICAL FRUIT COMPANY,
APPELLANT,

vs.

WILLIAM HENDERSON AND HENRY J. LEOVY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT IN REPLY.

DUANE E. FOX,
For Appellant.

J. WARD GURLEY,
Of Counsel.

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IN THE

Supreme Court of the United States.

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PLAQUEMINES TROPICAL FRUIT COMPANY,
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vs.

WILLIAM HENDERSON AND HENRY J. LEOVY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT IN REPLY.

The position taken by us in this case is that the judgment of the courts of Louisiana, relied upon herein as a former adjudication, was absolutely void for lack of jurisdiction in the courts rendering the judgment. Such lack of jurisdiction, we maintain, is fundamental, because the case was one wholly between a State and citizens of other States, and was therefore confided by the Constitution, for the most imperative reasons, to the Federal

judiciary. The suit was brought by the State in her own courts and, in the present state of Congressional legislation, it was absolutely impossible to bring the merits of the case before any Federal tribunal for determination, and an entire clause of paragraph 1, section 2, of article III, of the Constitution will be stricken from that instrument, if the jurisdiction of the State court be sustained.

Furthermore, if such a judgment of a State court be sustained, on the ground that Congress has acted or failed to act, a portion of the original jurisdiction of the Supreme Court of the United States is wholly and irretrievably lost, no matter what public exigency may arise in the future requiring the exercise by this court of the very jurisdiction which the court is now invited to abdicate. That jurisdiction was conferred, not by Congress, but by the Constitution itself, and we deny that any power exists in Congress to withdraw that jurisdiction from this court, either absolutely or by making its existence depend upon a contingency, or upon an option to be exercised by a party to the cause, unless at the same time Congress provides the machinery by which the judicial power of *some* Federal court can be exercised, by appeal or removal, upon the merits of the controversy. For, at the very time when the national welfare shall most require the exercise of that jurisdiction, the moving party, a State about to do, or suspected of being about to do, injustice to a citizen of another State, will most assuredly use her option of having the controversy decided in her own tribunals.

Our position is attacked in the brief for appellees, filed herein, by arguments which may be classed under two general heads:

(1.) That the jurisdiction of the Supreme Court of the United States is not both original *and* exclusive.

(2.) That the State courts can take jurisdiction in all cases where Congress has not made the Federal jurisdiction exclusive.

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I.

Counsel for appellees seem in their brief to mistake our position, although we have tried to make it very clear. It is not necessary to our position that we should insist that, under the Constitution, the jurisdiction of the Supreme Court in controversies between a State and citizens of other States is both original and so exclusive that Congress cannot confer such jurisdiction upon other courts. What we do maintain is that Congress cannot confer upon the courts of the States a jurisdiction which, while nominally concurrent, is in fact *exclusive* of the courts of the United States. We do not insist that Congress cannot give concurrent jurisdiction in this class of cases to the inferior courts of the United States. Nor do we insist that Congress cannot permit concurrent jurisdiction to be exercised in this class of cases by the courts of the States, *provided* the right of supervision by the Federal judiciary, by appeal or removal, be simultaneously recognized and made practicable.

Such being our position, most of the cases cited in the brief for appellees are not opposed to our contention, as will be seen by a brief reference to them.

In Börs *vs.* Preston (111 U. S. 262) it was held that the original jurisdiction of the Supreme Court of the United States is not exclusive of the *circuit court of the United States* in a suit between a citizen of a State and an alien who is also a foreign consul.

In Ames *vs.* Kansas (111 U. S. 449) it was held that the original jurisdiction of the Supreme Court of the United States is not exclusive of the *circuit court of the United States*, in a case between a State and a citizen of another State, where the validity of a law of the United States is the question at issue.

In California *vs.* Southern Pacific Company (157 U. S.

229) it was held that the Supreme Court of the United States cannot take jurisdiction between a State and citizens of other States *and her own citizens*. This is of course true, as no jurisdiction is given by the Constitution to suits between a State and her own citizens. But in the present case the record showed that the defendants were both citizens of other States.

In Gittings *vs.* Crawford (1 Taney Circuit Court Reports, 1) it was held that the jurisdiction of the Supreme Court of the United States is not exclusive of the *district courts of the United States* in suits by a citizen of a State against a foreign consul, but that such jurisdiction may be given to "the inferior judicial tribunals of the *United States*."

In Graham *vs.* Stucken (4 Blatchford Circuit Court Reports, 50), a suit by a citizen of a State against a foreign consul, Mr. Justice [redacted] held: "I cannot say that the jurisdiction in this case is exclusively in the Supreme Court, but am satisfied that it may be conferred upon the inferior tribunals of the *Federal* judiciary."

The decision in none of the above cases, cited by the appellees, is contrary to our position. One case is cited, however, from a State court of New York, which both in reasoning and effect is opposed to the principle which we are maintaining. In Delafield *vs.* State of Illinois (2 Hill, 164) the State of Illinois sued a citizen of another State in the State courts of New York, which upheld their jurisdiction. We believe the reasoning of that case to be unsound, and we do not find that it has been followed by any Federal court in any case involving the precise point now before this court.

We call attention to the fact, however, that the case mentioned was not a suit by a State *in her own courts* against a citizen of another State, but in the courts of another State. That fact removes, to a certain extent, the evil sought to be avoided by the Constitution, and regarding which Hamilton said in the Federalist, "No man ought certainly to be

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a judge in his own cause, or in any cause in respect to which he has the least interest or bias." (Federalist, 80.) The case, rightly considered, cannot therefore be regarded as an authority for the jurisdiction claimed for the courts of Louisiana in this case.

II.

The remaining cases cited by counsel for the appellees are in support of their position that the State courts have jurisdiction in all cases where Congress has not made the Federal jurisdiction exclusive.

In Teal *vs.* Felton (12 Howard, 285) it was argued that a State court had no jurisdiction to try a case involving the action of a United States postmaster acting under the laws of the United States. This court held that the case was of a nature of which the State courts, under their ordinary jurisdiction, had cognizance and that there is nothing in the Constitution to exclude their jurisdiction on the ground that the construction of a law of the United States was involved.

Again, in Claflin *vs.* Houseman (93 U. S., 130) it was claimed that an assignee in bankruptcy could not sue in the State courts. It was held by Mr. Justice Bradley that the assignee could bring such a suit, no exclusive jurisdiction being given to the courts of the United States, that the laws of the United States are as much the law of the land as State laws are, and that in such cases the State courts do not exercise a new jurisdiction conferred upon them, but their ordinary jurisdiction derived from their constitution under the State laws.

In Houston *vs.* Moore (5 Wheaton, 1) the sole question was whether a State militiaman should be tried by a State court-martial or a United States court-martial. The case is absolutely not in point, for the Constitution provides for the urisdiction of civil courts only, not of military courts.

None of the cases just cited are in conflict with our position, although some of the general discussion found in the opinions, and not necessary to the decision of the particular case, may seem to be so. It is not necessary to our contention that we deny to State courts the jurisdiction which they possessed previous to the adoption of the Constitution, except where, by the necessary effect of the constitutional grant of judicial power, such jurisdiction is taken from them. They do not possess such jurisdiction where, as in this case, an original jurisdiction is vested in a Federal court by the Constitution itself, and where no legislation has been enacted whereby, if State courts be allowed to exercise the same jurisdiction, "all the causes of the specified classes shall, for weighty public reasons, receive their *original* or *final* determination in the courts of the Union" (The Federalist, No. 82). In such case "an authority is granted to the Union with which a similar authority in the States would be utterly incompatible." (*Ibid.*)

We can have no quarrel with what Congress may do with the appellate jurisdiction of the Supreme Court, for such appellate jurisdiction is by the Constitution expressly confided to the discretion of Congress. But the Constitution itself vests original jurisdiction in the Supreme Court in four classes of cases.

(1) Cases affecting ambassadors, other public ministers and consuls; (2) controversies between a State and foreign States, citizens and subjects; (3) controversies between two or more States; and (4) controversies between a State and citizens of another State.

If Congress may destroy the original jurisdiction of this court (or, what is the same thing, commit it to the option of one party, whose interest will be not to exercise such option) in one case, why not in all? And if Congress may, by acting or failing to act, deprive the other party of

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all power to bring the case before any Federal court for determination of the merits of the controversy, then not only is a portion of the Federal jurisdiction lost which each State contracted should exist, but that portion is lost which is of such great importance that the States committed it to the original cognizance of the highest court of the nation. We cannot believe that the founders intended, or contemplated the possibility, that a Federal jurisdiction so important might be thrown away by the intention or carelessness of Congress.

These classes of cases were particularly committed to the Federal judiciary for the purpose of preserving the peace, both foreign and domestic. No chain is stronger than its weakest link. The strength of a constitution must be measured not in times of calm, but in times of stress. If the position of appellees be correct, a plaintiff State, in time of greatest tumult, and therefore in time of greatest need of the restraint of the Federal compact and guaranty, may make her jurisdiction exclusive of that of the Federal judiciary. We submit that a construction which leads to such results cannot be sound.

DUANE E. FOX,
Of Counsel for Appellant.

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Brf. of Leovy, Blair & Morse
Appellees

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OCTOBER TERM, 1897.

No. 204.

THE PLAQUEMINES TROPICAL FRUIT COMPANY,
APPELLANT,

versus

WM. HENDERSON AND HENRY J. LEOVY, APPELLEES.

BRIEF FOR APPELLEES.

HENRY J. LEOVY,
JOSEPH PAXTON BLAIR,
Alexander Porter Morse *Counsel for Appellees.*

Thomason, Print., 526 Natchez Street, N. O.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 204.

THE PLAQUEMINES TROPICAL FRUIT COMPANY, APPELLANT,

versus

WM. HENDERSON AND HENRY J. LEOVY, APPELLEES.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

Plaintiff, claiming to be the owner and in possession of certain land in this State, and charging defendants with asserting title thereto, and interfering with its ownership and possession, brings this suit to enjoin defendants from trespassing or committing waste on the land to which they assert title, and to obtain a decree recognizing the validity of plaintiff's title and quieting it in the possession thereof.

Defendants plead in bar a former adjudication of the State Court, in a suit brought by the State against complainant and Charles C. Buck, its then President, in which it was adjudged that the State was the owner and entitled to the possession of the land which complainant now claims, and in which complainant was perpetually enjoined from interfering with the State's full rights of ownership

and possession of the land. The plea contains the usual and proper averments, showing the validity of the proceedings in the State Court and the finality of the judgment pleaded in bar. It is further averred that the title under which complainant now claims the land is the same title which it set up and relied upon in the State Court; and that the land stated in complainant's bill of complaint to have been acquired by defendants from the State of Louisiana, and of which complainant now claims to be the owner, and in respect to which the relief herein sought is asked, based on said claim of ownership, is a part and portion of the same land which was adjudged by the State Court to belong to the State, and that the defendants acquired the land from the State subsequent to the judgment of the State Court, and are privies in estate to the State, in whose favor the judgment was rendered.

It is manifest that the complainant has no right to seek the relief it prays for unless it is the owner and entitled to the possession of the land which it charges defendant with asserting title to. It is equally manifest that, in claiming to be the owner and possessor of the land in question, complainant is asserting the contrary of what was adjudged in the State Court, and is violating the injunction issued by that Court.

Unless the former adjudication pleaded in bar is an absolute nullity, defendants' plea must be adjudged sufficient.

Complainant contends that all the proceedings in the State Court, including the final decree and injunction, are absolute nullities, because the State Court was without jurisdiction. The want of jurisdiction is based on the proposition, that, by reason of the Constitution and laws of

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the United States as they exist at present, a State Court has no jurisdiction of a suit between a State and the citizens of another State; that the Supreme Court of the United States has exclusive jurisdiction of such controversies.

For more than a century every State Court in every State of the Union has been constantly entertaining jurisdiction over such cases, and it is now claimed, at this late day, that the innumerable judgments which have been rendered by State Courts in such causes are absolute nullities. It is claimed that every suit by a State against a citizen of another State, or an alien, every controversy over the collection of a tax or other petty matter, must be instituted in the Supreme Court of the United States. On the strength of this discovery, your Honors will be asked to pronounce against the construction of the Constitution made in the discussions in the Federalist, which preceded its adoption against the construction placed upon it by the Judiciary Act of 1789, by men who played an important part in drafting the Constitution itself, against the construction placed upon it by successive Congresses from the Judiciary Act of 1789, to the Revised Statutes of 1875, a construction which has been recognized and acted upon by all the Courts of this country, State and Federal, and has been acquiesced in by the bar and by litigants for over one hundred years.

Turning first to the Revised Statutes, we find that Section 687 provides that, "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, *except* between a State and its citizens, *or between a State and citizens of other States, or aliens,*

in which latter case it shall have original, but not exclusive jurisdiction. * * *" (Italics ours).

And Section 711, enumerating the cases where the jurisdiction of the Courts of the United States shall be exclusive of the Courts of the several States, in the seventh paragraph expressly excepts cases "between a State and citizens of other States."

So far as the Statutes go, they expressly recognize the concurrent jurisdiction of the State Courts in the class of cases under discussion. If we go back to the Judiciary Act of 1789, passed by men who were conversant with the discussions which attended the adoption of the Constitution, many of whom took part in framing the Constitution, we find that they also were unaware of the exclusive nature of the Constitutional grant of jurisdiction to the Federal Courts. Section 13 of the Act of 1789 provided "that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens, in which latter case it shall have original, *but not exclusive* jurisdiction." (Italics ours).

Neither the Act of 1789 nor the Revised Statutes gave jurisdiction to the Circuit or District Courts of the United States over controversies between a State and citizens of other States, unless where their jurisdiction attached by reason of the nature or the case, irrespective of the parties. Hence, in providing that the original jurisdiction of the Supreme Court over such cases should not be exclusive, Congress must have had in mind the jurisdiction of the State Courts, and the express exception of such cases is tan-

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tamount to a declaration of the intention not to interfere with the concurrent jurisdiction of the State Courts.

Unless the Court is prepared to hold that the framers of the Act of 1789 and subsequent Congresses have misunderstood and disregarded the Constitution, we need go no farther. But complainant does not hesitate to attack the constitutionality of the Act of 1789, and to assert the nullity of the cited Sections of the Revised Statutes. He appeals from them to the Constitution.

We turn, then, to the Constitution. As the question is, whether a power given to the general government is exclusive, or whether the States may maintain a concurrent exercise, it is well to state the established canon of constitutional interpretation in regard to exclusive and concurrent powers. It was first laid down in the Federalist, from which Judge Story quotes in his work on the Constitution, as follows (Section 436): "But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignity which they before had, and which were not, by that act, *exclusively* delegated to the United States. This exclusive delegation, or rather the alienation of State sovereignity, would only exist in three cases, where the Constitution in express terms granted an exclusive authority to the Union; where it granted, in one instance, an authority to the Union, and in another prohibited the States from exercising the like authority, and where it granted an authority to the Union to which a similar authority in the States would be absolutely and totally *contradictory* and *repugnant*." Commenting on this last rule, the author says (Sec. 438): "But unless, from the nature of the power or from the obvious

results of its operations, a repugnancy must exist, so as to lead to a necessary conclusion that the power was intended to be exclusive, the true rule of interpretation is, that the power is merely concurrent."

The Constitution of the United States provides as follows (Article III, Sec. 2, Cl. 1 and 2) :

"Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting Ambassadors, other public Ministers and Consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more States ; between a State and citizens of another State ; between citizens of different States ; between citizens of the same State claiming land under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Now, the constitutional grant of judicial power to the general government contains no words of exclusion, nor are the State Courts elsewhere prohibited from exercising jurisdiction over the cases mentioned in Article III. Hence, unless the grant of jurisdiction to the Federal Courts over certain cases is "absolutely and totally repugnant" to the existence of concurrent jurisdiction in the State Courts over the specified cases, there is nothing in the Constitution to oust the State Courts of concurrent jurisdiction

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over controversies between a State and citizens of other States.

Complainant's contention is that the mere grant, in the first clause of Section 2, to the Federal Courts of jurisdiction over certain classes of cases, including controversies between a State and citizens of other States, coupled with the grant to the Supreme Court of original jurisdiction in cases in which a State shall be a party, is sufficient of itself to completely oust the State Courts of any jurisdiction over such cases, and makes it imperative that all such cases must be tried in the Supreme Court of the United States. He seems to admit that Congress might provide for their trial in other Courts, provided the right to *remove* directly to the Supreme Court were conferred in every case, but as Congress has not done this, he contends that all controversies between a State and citizens of other States, or aliens, must be brought in the United States Supreme Court.

The fallacy of complainant's contention consists in the assumption that there is something in the nature of a grant of jurisdiction or judicial power, or in the grant of jurisdiction over the particular class of cases in question, which renders it exclusive or inconsistent with the existence of concurrent jurisdiction in the State Courts. The contrary is the well established law.

In discussing the identical question now presented, the Court of Errors of New York said, in an exceedingly elaborate opinion :

"There is nothing in the nature of jurisdiction, as applied to Courts, which renders it exclusive. It is not like a grant of property, which cannot have several owners at the same time. It is matter of common experience that two or more Courts may have concurrent powers over the

same parties and the same subject matter. Jurisdiction is not a right or a privilege belonging to a Judge; but an authority or power to do justice in a given case when it is brought before him. There is, I think, no instance in the whole history of the law where the mere grant of jurisdiction to a particular Court, without any words of exclusion, has been held to oust any other Court of the power which it before possessed. Creating a new forum with concurrent jurisdiction may have the effect of withdrawing from the Courts which before existed a portion of the causes which would otherwise have been brought before them; but it cannot affect the power of the old Courts to administer justice when it is demanded at their hands." Delafield vs. State of Illinois, 11 Hill's Reports (New York Court of Errors), pp. 164-5.

This case was referred to by Chancellor Kent in his Commentaries, when, after discussing the concurrent powers of the States in matters of judicial cognizance, he said:

"The conclusion then, is that in judicial matters the concurrent jurisdiction of the State tribunals depends altogether upon the pleasure of Congress, and may be revoked and extinguished whenever they think proper, in every case in which the subject-matter can constitutionally be made cognizable in the Federal Courts; and *that without an express provision to the contrary, the State Courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally* over the subject-matter." Kent's Com., Vol. 1, p. 400.

In Gittings vs. Crawford, Taney's Dec. 1, Judge Taney said, in reference to the grant of judicial power in Article III of the Constitution: "The true rule in this case is, I think, the rule which is constantly applied to ordinary acts of legislation in which the grant of jurisdiction over a certain subject-matter to one Court does not, of itself, imply that that jurisdiction is to be exclusive." These

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words were quoted with approval by the Supreme Court of the United States in Ames vs. Kansas, 111 U. S. p. 449, and in Bors vs. Preston, 111 U. S. p. 260.

Referring to the rules of interpretation of the Constitution cited above, Hamilton, in the 82d number of the Federalist, plainly lays down the doctrine, that the State Courts would retain concurrent jurisdiction in those cases of which they previously had cognizance. He rejects the opposite construction, because it "would amount to an alienation of the State powers by implication."

It follows, from the foregoing, that there is nothing in the grant of jurisdiction to the Federal Courts, or of original jurisdiction to the Supreme Court, over cases between a State and citizens of another State, to prevent the exercise of concurrent jurisdiction by the State Courts. Nor is there anything in the nature of such cases to prevent their trial in the Courts of a State. The Courts of every country entertain jurisdiction of controversies between the State or government, and citizens of other States, or aliens, and so did the States of the Union before the adoption of the Constitution. They have continued to do so to this day.

We submit that, upon principle, treated as *res nova*, plaintiff's contention is utterly untenable. But if there remains any doubt upon the question, it will be removed by a consideration of the authorities.

In the case of Ames vs. Kansas, 111 U. S. 449, this Court took occasion to explain the purpose and effect of the constitutional grant of original jurisdiction to the Supreme Court of certain cases, including those to which a State was a party. That suit was originally brought by the State of Kansas in its own Courts against Ames and others,

all citizens of other States (p. 457), and directors of a certain railroad company also sued, but in a separate suit. The case was removed to the Circuit Court of the United States as one arising under the Constitution and laws of the United States, the matter complained of by the State having been authorized by Congress.

The case came before the Supreme Court on error to review an order remanding the cause for want of jurisdiction. In deciding the question of the jurisdiction of the Circuit Court, the Supreme Court had to determine whether the constitutional grant to it of original jurisdiction over suits to which a State was a party was necessarily exclusive.

After referring to Sections 1 and 2 of Article III of the Constitution and the Judiciary Act of 1789, the Court said (pp. 464-5) :

"It thus appears that the first Congress, in which were many who had been leading and influential members of the convention, and who were familiar with the discussions that preceded the adoption of the Constitution by the States, and with the objections urged against it, did not understand that the original jurisdiction vested in the Supreme Court was necessarily exclusive. That jurisdiction included all cases affecting ambassadors, other public ministers and consuls, and those in which a State was a party. The evident purpose was to open and keep open the highest Court of the nation for the determination, in the first instance, of suits involving a State or a diplomatic or commercial representative of a foreign government. So much was due to the rank and dignity of those for whom the provision was made; but to compel a State to resort to this one tribunal for the redress of all its grievances, or to deprive an ambassador, public minister or consul of the privilege of suing in any Court he chose having jurisdiction of the parties and the subject-matter of his action, would be,

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in many cases, to convert what was intended as a favor into a burden.

"Acting on this construction of the Constitution, Congress took care to provide that no suit should be brought *against* an ambassador or other public minister except in the Supreme Court, but that he might sue in any Court he chose that was open to him. As to consuls, the commercial representatives of foreign governments, the jurisdiction of the Supreme Court was made concurrent with the District Courts, and suits of a civil nature could be brought against them in either tribunal. With respect to States it was provided that the jurisdiction of the Supreme Court should be exclusive in all controversies of a civil nature where a State was a party, except between a State and its citizens, and *except*, also, between a State and citizens of other States, or aliens, in which latter case its jurisdiction should be original, but not exclusive. Thus, the original jurisdiction of the Supreme Court was made concurrent with any other Court to which jurisdiction might be given in suits between a State and citizens of other States, or aliens. No jurisdiction was given in such cases to any other Court of the United States and the practical effect of the enactment was, therefore, to give the Supreme Court exclusive original jurisdiction in suits against a State begun without its consent, and *to allow the State to sue for itself in any tribunal that could entertain its case.* In this way States, ambassadors and public ministers were protected from the compulsory process of any Court other than one suited to their high positions, *but were left free to seek redress for their own grievances in any Court that has the requisite jurisdiction. No limits were set on their powers of choice in this particular.* This, of course, did not prevent a State from allowing itself to be sued in its own courts or elsewhere in any way, or to any extent, it chose." (Italics ours).

No comment is necessary to show how completely plaintiff has misunderstood the purpose and meaning of the provisions of the Constitution upon which he relies.

If additional authority is wanted, we refer to the case of

California vs. Southern Pacific Company, 15 Sup. Ct. Rep. 591, decided in March, 1895.

That case was a controversy between a State and a citizen of another State, brought originally in the Supreme Court, and dismissed, because it was found that other parties, citizens of California, would be affected by the decision. The Court considered it would be *infra dignatatem* to render a judgment which would not bind every one concerned. The whole decision shows that the Court considered that the State Courts could exercise jurisdiction. Mr. Justice Field, in his concurring opinion, advised resort to the State Court, and Mr. Justice Harlem, in his dissenting opinion (p. 607), referred to the possible difficulty the State would experience in *getting service* in her courts upon a citizen of another State, and protested against *compelling* the State of California to resort to the State Courts of Kentucky.

Mr. Justice Harlan notices, also, the fact that the State must sue either in the Supreme Court of the United States, or in the State Courts, for the subordinate Federal Courts have not been given jurisdiction of suits between a State and citizens of another State, except when the suit happens to be one arising under the Constitution or laws of the United States (p. 607). And the Chief Justice, who delivered the opinion of the majority, referred to the Judiciary Act of 1789, and said that the Supreme Court had original, *but not exclusive* jurisdiction of controversies between a State and citizens of another State (p. 305). See also 5 Wheat. pp. 26-27.

If the authorities we have cited did not exist, there is a line of decisions in the Federal Courts in relation to the nature and extent of the constitutional grant of jurisdic-

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tion, in all cases affecting *consuls*, which would be equally fatal to the plaintiff's contention.

The first clause of Section 2, Article II, of the Constitution, provides that "the judicial power shall extend * * * to all cases affecting ambassadors, other public ministers and *consuls;*" the second clause of Section 2 declares that "in *all* cases affecting ambassadors, other public ministers and consuls, * * * the Supreme Court shall have original jurisdiction." Now, if any grant of jurisdiction in Article III is exclusive, it is that giving jurisdiction to *all* cases affecting ambassadors, other public ministers and consuls. There is more force in the contention that in such cases the jurisdiction is exclusive than in controversies between a State and citizens of another State, because the word "all" was omitted in dealing with the latter class of cases. Yet the Courts have refused to hold that the jurisdiction of the Supreme Court was exclusive, and have found nothing objectionable in the Acts of Congress which first gave the District Courts concurrent jurisdiction, but excluded the State Courts and finally restored the jurisdiction of the State Courts.

It is significant that the restoration of the jurisdiction of the State Courts was accomplished simply by the repeal of the clause declaring the jurisdiction to be exclusive of the State Courts. 18 Stat. at Large, p. 318; and see Houston vs. Moore, 5 Wheat. 1, 27; see also 1 Kent's Comm. p. 399.

The legislation and jurisprudence on the subject are fully discussed in the case of *Bors vs. Preston*, 111 U. S. 252. In that case and in those of Giddings vs. Crawford, 1 Taney, 1 and of *Graham vs. Stucken*, 4 Blatchford, 480, the

construction of the Constitution upon which plaintiff relies was rejected as unsound in principle and unsupported by authority. Some general expressions found in the earlier cases, which plaintiff cites in support of his views, are referred to in Bors vs. Preston, and shown by later utterances of the same Judges not to have the meaning or effect claimed for them.

In rejecting the proposition, that all cases affecting consuls must be brought before the Supreme Court, the inconvenience of such a construction of the Constitution was referred to, and it was said that the time of the Supreme Court, created for the decision of grave and important matters, was never intended to be taken up with the trial of petty cases. The same objection may, with greater force be urged in the present case.

It would not be difficult to make a *reductio ad absurdum* of plaintiff's contention in respect to the effect of the constitutional grant of jurisdiction over controversies between a State and citizens of another State by applying it to the other classes of cases over which the federal judiciary is in like manner granted jurisdiction. But we have already occupied far more time than the questions involved justify.

We submit that the attack upon the jurisdiction of the State Court which rendered the decision pleaded in bar is absolutely without merit, and that defendant's plea should be adjudged sufficient.

HENRY J. LEOVY,
JOSEPH PAXTON BLAIR,
Counsel for Appellees.

Alexander Porter Morse

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No. 205.

Brief of Atty. Gen.l (Pradt) for Appellant

Filed Oct. 27, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, PLAINTIFF IN error,
v.
PATRICK HENRY WINSTON. } No. 205.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, PLAINTIFF IN error,
v.
PATRICK HENRY WINSTON. } No. 205.

APPELLANT'S BRIEF.

STATEMENT.

This case was originally brought by appellee in the United States circuit court for the eastern division of the district of Washington, and judgment there going against them was by these appellants appealed to the circuit court of appeals for the ninth circuit, from which, judgment again going against them, they have appealed to this court.

The items described in the second and third findings of fact of the circuit court (Rec., pp. 15 and 16), having been disallowed by that court, and so much of the items in finding 7 (Rec., p. 17) as pertains to the defense of the case of *Ross* v. *Eells*, having been disallowed by the circuit court of appeals, are not at issue in this appeal.

ASSIGNMENT OF ERRORS.

The plaintiffs in error rely upon the following errors in the record:

I.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the defendant in error was entitled to recover the sum of $187.21 in addition to the amount paid him or any sum for services in the case of the United States against the steam tug *Pilot*. (VII, p. 45; Finding 4, p. 16, Rec.)

II.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the defendant in error was entitled to recover the sum of $310 as compensation for his services in the case of Dunsmuir against Bradshaw. (VIII, p. 45; Finding 6, p. 16, Rec.)

III.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the said defendant in error was entitled to recover for his services in the case of Gee Lee the sum of $250. (XVI, p. 46; Finding 5, p. 16, Rec.)

IV.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that, upon the facts as found by the court, the

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defendant in error was entitled to recover any sum whatever or was entitled to any judgment whatever for his services in the case of the steam tug *Pilot*, in the case of Dunsmuir against Bradshaw, and in the case of Gee Lee.

V.

The circuit court of appeals erred in refusing to reverse the judgment and decision of the circuit court of the United States for the district of Washington, holding, that defendant in error was entitled to recover for his services in the aforesaid cases and in refusing to render judgment in that behalf for these plaintiffs in error.

ARGUMENT.

We concede, upon the authority of *United States* v. *Smith* (158 U. S. R., 346), that the judgment of the courts below allowing mileage, as set out in finding 7 (Rec., p. 17), is correct.

There are, therefore, left in issue in this case only those items pertaining to appellee's service as a district attorney in the circuit court of appeals sitting at a point outside the territorial lines of his district.

Briefs fully setting forth the position of the Government on this question have already been filed in this court in the cases of *United States* v. *Garter* and *United States* v. *Herron*, submitted at this time, and it is not deemed necessary in this case to add anything to what has been said there.

LOUIS A. PRADT,
Assistant Attorney-General.

OPINION

PLAQUEMINES TROPICAL FRUIT COMPANY *v.* HENDERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 204. Argued April 15, 1898. — Decided May 2, 1898.

The courts of a State may take cognizance of a suit brought by the State, in its own courts, against citizens of other States, subject to the right of the defendant to have such suit removed to the proper Circuit Court of the United States, whenever the removal thereof is authorized by act of Congress, and subject also to the authority of this court to review the final judgment of the state court, if the case be one within its appellate jurisdiction.

THE case is stated in the opinion.

Mr. Duane E. Fox for appellant. *Mr. J. Ward Gurley* was on his brief.

Mr. Victor Leovy for appellees. *Mr. Henry J. Leovy, Mr.*

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Joseph Paxton Blair and *Mr. Alexander Porter Morse* were on his brief.

Mr. Justice Harlan delivered the opinion of the court.

This suit was commenced February 11, 1895, in the Circuit Court of the United States for the Eastern District of Louisiana by the Plaquemines Tropical Fruit Company, a New Jersey corporation, against the defendants in error William Henderson and Henry J. Leovy, citizens of Louisiana.

It is, in effect, a suit to quiet the title of the plaintiff to certain lands in the Parish of Plaquemines in the State, and to restrain the defendants from committing trespasses thereon.

The defendants filed a joint and several plea, in which it was averred: That in 1892 a suit was instituted by the State of Louisiana in the Civil District Court of the Parish of Orleans, Louisiana, against the Plaquemines Tropical Fruit Company, Charles C. Buck the vice president of that company and a citizen of Maryland, and others, in which suit the State sought a decree adjudging it to be the owner of certain lands within its limits; in which action, the defendants having appeared, it was found by the verdict of a jury, and in accordance with the verdict it was adjudged by the court, that the lands here in question belonged to the State, and that the Plaquemines Tropical Fruit Company and Buck had no title thereto; that such judgment, upon the appeal of the company and Buck, was affirmed by the Supreme Court of Louisiana; that a writ of error sued out by the same defendants to this court was dismissed; that the lands the title to which is involved in this suit are part of those the title to which was involved in that action; that Henderson and Leovy acquired title from the State after the above judgment obtained by it had become final; and that such judgment remained unreversed and unmodified.

The defendants Henderson and Leovy pleaded the above proceedings and the judgment obtained by the State in bar of the present suit.

At the hearing below, the plaintiff having admitted the

correctness in point of fact of the defendants' plea in bar, it was adjudged that the plea was sufficient. The bill was accordingly dismissed.

The contention of the appellant is that the Civil District Court of the Parish of Orleans could not, consistently with the Constitution of the United States, take cognizance of any suit brought by the State of Louisiana against citizens of other States, and, consequently, its judgment, now pleaded in bar, was null and void. If that contention be overruled the judgment below must be affirmed; otherwise it must be reversed, and the cause remanded with directions to hold the plea insufficient.

The appellant, in support of its contention, insists that the entire judicial power surrendered to the United States by the people of the several States vested absolutely in the United States under the Constitution; that by that instrument the nation acquired certain portions of the judicial power naturally inherent in sovereignty; that thereafter a state court could not, without the expressed consent of the United States, take cognizance of a case embraced in such cession of judicial power; and that the judicial power of the United States, not distributed by the Constitution itself, cannot be so distributed that a state court may take cognizance of a case or controversy to which that power is extended, *if* its determination thereof is not made by Congress subject to reëxamination by some court of the United States.

These propositions applied to the case before us mean that the Civil District Court of the Parish of Orleans was without jurisdiction to render judgment in the above suit instituted by the State, because there was no provision in the acts of Congress whereby its judgment could be reviewed by some court of the United States.

The Constitution provides —

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. . . ." Art. III, Sec. 1.

"The judicial power shall extend to all cases in law and

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equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects. Art. III, Sec. 2.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." Ib.

Do the words, "the judicial power shall extend . . . to controversies . . . between a State and citizens of other States," and the words "in all cases . . . in which a State shall be party, the Supreme Court shall have original jurisdiction," necessarily manifest a purpose to exclude all such controversies from cognizance by the courts of the several States? Was it intended that the Constitution should, by its own force, without legislation by Congress, divest the courts of the States of jurisdiction of cases or controversies to which the judicial power of the United States was extended?

These questions were the subject of earnest consideration while the Constitution was before the people of the United States for acceptance or rejection. It was contended by some who recommended its rejection that the proposed Constitution, without legislation by Congress, would give to the one Supreme Court established by it, and to such other courts as Congress should from time to time create, *exclusive* jurisdiction in all such cases or controversies. That interpretation was disputed, and Hamilton in the Federalist said: "The principles established in a former paper teach us that the State will retain all *preëxisting* authorities, which may not be exclusively delegated

to the Federal head; and that this exclusive delegation can only exist in one of three cases; where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is granted to the Union, and the exercise of a like authority is prohibited to the States; or, where an authority is granted to the Union, with which a similar authority in the States would be utterly incompatible. Though these principles may not apply with the same force to the judiciary as to the legislative power, yet I am inclined to think that they are, in the main, just with respect to the former, as well as the latter. And under this impression I shall lay it down as a rule that the state courts will *retain* the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes." He recognized the fact that there was apparent support to the objection referred to in the clause "the *judicial power* of the United States *shall be vested* in one Supreme Court, and in *such* inferior courts as the Congress shall from time to time ordain and establish." That clause, he said, "might either be construed to signify that the supreme and subordinate courts of the Union should alone have the power of deciding those causes, to which their authority is to extend; or simply to denote that the organs of the national judiciary should be one Supreme Court, and as many subordinate courts as Congress should think proper to appoint; in other words, that the United States should exercise the judicial power with which they are to be invested, through one supreme tribunal, and a certain number of inferior ones, to be instituted by them. The first excludes, the last admits, the concurrent jurisdiction of the state tribunals. And as the first would amount to an alienation of state power by implication, the last appears to me the most defensible construction." He also said that the judicial power of every government "looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we con-

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sider the state governments and the national government as they truly are, in the light of kindred systems and as parts of one whole, the inference seems to be conclusive that the state courts would have a concurrent jurisdiction in cases arising under the laws of the Union, where it was not expressly prohibited." Federalist, No. 82.

The first Congress acted upon this view of the scope and effect of the Constitution when it passed the Judiciary Act of September 24, 1789, c. 20, creating the Circuit and District Courts of the United States and defining their jurisdiction. 1 Stat. 73. By that act it was declared that the District Courts should have "exclusively of the courts of the several States" cognizance of specified crimes and of certain named civil causes or suits, and cognizance "concurrent with the courts of the several States or the Circuit Courts, as the case may be," of certain other causes or suits. By that act also the Circuit Courts were given cognizance, "concurrent with the courts of the several States," of all suits of a civil nature at common law or in equity where the matter in dispute exceeded, exclusive of costs, the sum or value of five hundred dollars, and the United States were plaintiffs or petitioners, or where an alien was a party, or where the suit was between a citizen of the State in which it was brought and a citizen of another State. And by the same act it was provided that "the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens; *and except also between a State and citizens of other States*, or aliens, in which latter case it shall have original, but not exclusive, jurisdiction, . . . and original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice consul shall be a party." The act also made provision for the removal of a suit commenced in a state court against an alien, or by a citizen of one State against a citizen of another State, if the matter in dispute exceeded the above sum or value; but it contained no provision giving the Circuit Courts original jurisdiction of a suit by a State against a citizen of another State, nor for the removal into a subordi-

nate Federal court, of a suit brought by a State in one of its own courts against a citizen of another State. Nor did that act provide for the review by this court of the final judgment of the state court simply because it was rendered in a suit brought by a State against a citizen of another State which involved no question of a Federal nature.

So, that in the first judiciary act — passed by a Congress many of whose members, as was the eminent jurist who drew the act, were delegates in the convention that framed the Constitution — we have a contemporaneous interpretation of the clauses relating to the exercise of the judicial power of the United States, which negatives the suggestions now made on behalf of the appellant.

It cannot be doubted that each of the original States had, prior to the adoption of the Constitution, complete and exclusive jurisdiction by its judicial tribunals over all legal questions, of whatsoever nature, capable of judicial determination, and involved in any case within its limits between parties over whom it could exercise jurisdiction. *Tennessee* v. *Davis*, 100 U. S. 257.

If it was intended to withdraw from the States authority to determine, by its courts, all cases and controversies to which the judicial power of the United States was extended, and of which jurisdiction was not given to the national courts exclusively, such a purpose would have been manifested by clear language. Nothing more was done by the Constitution than to extend the judicial power of the United States to specified cases and controversies; leaving to Congress to determine whether the courts to be established by it from time to time should be given exclusive cognizance of such cases or controversies, or should only exercise jurisdiction concurrent with the courts of the several States.

This was the view taken of this question by Chancellor Kent in his Commentaries. Referring to the clauses of the Constitution relative to the judicial power of the United States, he said: "The conclusion then is, that in judicial matters the concurrent jurisdiction of the state tribunals depends altogether upon the pleasure of Congress, and may be

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revoked and extinguished whenever they think proper, in every case in which the subject-matter can constitutionally be made cognizable in the Federal courts, and that without an express provision to the contrary the state courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally over the subject-matter." 1 Kent's Com. 400.

In *Gettings* v. *Crawford*, Taney's Dec. 1, the question was considered whether the ninth section of the Judiciary Act of 1789, giving jurisdiction to the District Court of the United States of cases against consuls and vice consuls, was consistent with the clause of the Constitution providing that "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction." It was held that those words did not expressly exclude the jurisdiction of other courts of the United States in the cases mentioned. Chief Justice Taney observing: "The true rule in this case, is, I think, the rule which is constantly applied to ordinary acts of legislation, in which the grant of jurisdiction over a certain subject-matter to one court does not, of itself, imply that that jurisdiction is to be exclusive. In the clause in question there is nothing but mere affirmative words of grant, and none that import a design to exclude the subordinate jurisdiction of other courts of the United States on the same matter." That case, it is true, did not present any question as to the jurisdiction of the state courts, but it affirms the rule that the grant of original jurisdiction to a particular court in enumerated cases does not, of itself, import that the jurisdiction of that court is exclusive in such cases. If the clause just quoted is not to be interpreted as giving this court exclusive jurisdiction in cases affecting consuls, upon like grounds it cannot be interpreted as giving this court exclusive jurisdiction in suits instituted by a State, simply because of the provision giving the Supreme Court original jurisdiction where the State is a party.

But the cases most directly in point are those reported under the title of *Ames* v. *Kansas*, 111 U. S. 449, 464. One was a suit against the Kansas Pacific Railway, a corporation organ-

ized under the laws of the United States; the other a suit against certain persons constituting the board of directors of the Union Pacific Railway Company and citizens of States other than Kansas. Both suits were brought by the State in one of its own courts. It was contended that as the State was a party to those suits, this court had exclusive jurisdiction. After observing that the evident purpose of the Constitution was to open and keep open the highest court of the nation for the determination, in the first instance, of suits involving a state or a diplomatic or commercial representative of a foreign government, this court said: "So much was due to the rank and dignity of those for whom the provision was made; but to compel a State to resort to this one tribunal for the redress of all its grievances, or to deprive an ambassador, public minister or consul of the privilege of suing in any court he chose having jurisdiction of the parties and the subject-matter of his action, would be, in many cases, to convert what was intended as a favor into a burden. Acting on this construction of the Constitution, Congress took care to provide [in the original judiciary act] that no suit should be brought *against* an ambassador or other public minister except in the Supreme Court, but that he might sue in any court he chose that was open to him. As to consuls, the commercial representatives of foreign governments, the jurisdiction of the Supreme Court was made concurrent with the District Courts, and suits of a civil nature could be brought against them in either tribunal. With respect to States it was provided that the jurisdiction of the Supreme Court should be exclusive in all controversies of a civil nature where a State was a party, except between a State and its citizens, and *except*, also, between a State and citizens of other States, or aliens, in which latter case its jurisdiction should be original, but not exclusive. Thus, the original jurisdiction of the Supreme Court was made concurrent with any other court to which jurisdiction might be given in suits between a State and citizens of other States, or aliens. No jurisdiction was given in such cases to any other court of the United States, and the practical effect of the enactment was, therefore, to give the Supreme Court

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exclusive original jurisdiction in suits against a State begun without its consent, and to allow the State to sue for itself in any tribunal that could entertain its case. In this way States, ambassadors and public ministers were protected from the compulsory process of any court other than one suited to their high positions, but were left free to seek redress for their own grievances in any court that has the requisite jurisdiction. No limits were set on their powers of choice in this particular. This, of course, did not prevent a State from allowing itself to be sued in its own courts or elsewhere in any way, or to any extent, it chose."

And in *Robb* v. *Connolly*, 111 U. S. 624, 636, it was held that in defining and regulating the jurisdiction of the courts of the United States, Congress has taken care not to exclude the jurisdiction of the state courts from every case to which by the Constitution the judicial power of the United States extends. The reason given for this view was that upon the state courts, equally with the courts of the Union, rested the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States, and the laws made in pursuance thereof, whenever those rights were involved in any suit or proceeding before them; for, the court said, "the judges of the state courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, 'anything in the constitution or laws of any State to the contrary notwithstanding.'"

It is said that the present case differs from *Ames* v. *Kansas*, in that the latter was a suit arising under the Constitution and laws of the United States, and was, therefore, removable into the Circuit Court of the United States, while the present suit was not removable from the state court under any statute regulating the jurisdiction of the courts of the United States. But that difference only shows that Congress has not seen proper to provide for the removal from a state court of a suit brought by the State against citizens of other States and involving no question of a Federal nature, nor for the review

by this court upon appeal or writ of error of the final judgment in such a suit. It is for Congress to say how much of the judicial power of the United States shall be exercised by the subordinate courts it may establish from time to time. Its failure to invest the national courts with jurisdiction by removal from the state courts of a suit brought by a State against citizens of other States which involves no Federal question, cannot have the effect to deprive the States of the right which they possessed prior to the adoption of the Constitution to submit to one of its own courts all matters in which it was concerned and which were capable of judicial determination, to be there finally adjudicated as between the State and the parties who were within its jurisdiction so as to be bound by any judgment rendered, and who were not, by reason of their representative character or for other cause, placed exclusively under Federal jurisdiction, and exempted altogether from process issuing from state tribunals.

As, under the long-settled interpretation of the Constitution, the mere extension of the judicial power of the United States to suits brought by a State against citizens of other States did not, of itself, divest the state courts of jurisdiction to hear and determine such cases, and as Congress has not invested the national courts with exclusive jurisdiction in cases of that kind, it follows that the courts of a State may, so far as the Constitution and laws of the United States are concerned, take cognizance of a suit brought by the State in its own courts against citizens of other States; subject, of course, to the right of the defendant to have such suit removed to the proper Circuit Court of the United States, whenever the removal thereof is authorized by the acts of Congress, and subject, also, to the authority of this court to review the final judgment of the state court, if the case be one within our appellate jurisdiction.

For the reasons stated, it is adjudged that the court below did not err in sustaining the plea, and its judgment is

Affirmed.

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